Prior Judicial Experience

Judicial Internships/ Externships	**No**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Dauber, Michelle
mldauber@law.stanford.edu
Letter, Dean's
deansletter@law.stanford.edu
650-723-4455
Weisberg, Robert
weisberg@law.stanford.edu
Grossman, Joanna
jlgrossman@mail.smu.edu

This applicant has certified that all data entered in this profile and any application documents are true and correct.

BRIDGET KENNEDY

555 Salvatierra Walk, Apartment 213, Stanford, CA 94305| (716)748-1755 | bridget1@stanford.edu

June 12, 2023

The Honorable Jamar K. Walker
U.S. District Court for the Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Re: Law Clerk Application for Bridget Kennedy

Dear Judge Walker:

I am a rising third-year student at Stanford Law School and write to apply to serve as your law clerk in 2024-2025, or any future years for which you have open positions. My full-time commitment to serving others began at the age of seventeen, when I, two days after graduating high school, took my oath of office as a Plebe at the United States Naval Academy. That oath included a promise "to support and defend the Constitution of the United States against all enemies foreign and domestic." I have been upholding that promise ever since.

Upon my graduation from the USNA, I was commissioned as a Surface Warfare Officer and served as the Main Propulsion Division Officer aboard the *USS Carney*, an Arleigh-Burke class Destroyer, stationed in Rota, Spain. From piloting my ship, loaded with inter-continental ballistic missiles, at night through the Bosphorus Straits in Turkey, to engaging in a game of cat and mouse with a Russian submarine in the Black Sea, I learned how to handle pressure well and to think on my feet. Additionally, my sense of adventure has allowed me to be open to—and fearless in—tackling new challenges. Layered over those attributes is my constant commitment to excellence. I have witnessed first-hand that a rising tide raises all ships, and I have always sought to use my own life experiences to enhance the empathy, enthusiasm, and level of excellence amongst not only those I have led but those with whom I have worked and served.

My experiences and attributes have provided me with a perspective that I believe is somewhat unique compared to most judicial clerkship candidates. Retiring from the Navy, law school represented not only a new challenge but a way to continue my commitment to my oath—another way for me to serve others while supporting and defending our Constitution. I can think of no better way to deliver on that promise than to work in your chambers.

I am particularly interested in clerking for you, Judge Walker, because of my ties to Virginia, as well as your impressive career as an AUSA. I had the privilege of living under the Eastern District of Virginia's jurisdiction for about two years while I was stationed in Norfolk, Virginia. I lived in Virginia Beach and spent a significant amount of time exploring downtown

Norfolk. I really enjoyed the welcoming community of Norfolk and being so close to my fellow Navy friends. Ever since I have left Virginia, it has been my desire to return there. Additionally, as an aspiring prosecutor and AUSA myself, I would appreciate the opportunity to learn from someone who has occupied that role.

Enclosed please find my resume, references, law school transcript, and writing sample for your review. Professor Michele Landis Dauber, Professor Joanna Grossman, and Professor Robert Weisberg are providing letters of recommendation in support of my application.

I welcome the opportunity to discuss my qualifications further. Thank you for your consideration.

Very Respectfully,

Bridget Kennedy

BRIDGET BELL KENNEDY

BRIDGET KENNEDY

114 River Oaks Drive, Grand Island, NY 14072 | bridget1@stanford.edu | (716) 748-1755

EDUCATION

Stanford Law School Stanford, CA
J.D., expected 2024
Journal: *Stanford Journal of International Law* (Volume 59: Senior Editor; Volume 58: Member Editor)
Activities: Stanford Law Veterans Organization (Financial Officer), Women of Stanford Law, Kirkwood Moot Court Competition

United States Naval Academy Annapolis, MD
B.S. with Distinction, Honors Oceanography, May 2017
Honors: Captain Charles N.G. Hendrix Oceanography Award (awarded to the graduating Midshipman who is ranked first in major overall); Top 5% of class based on Overall Order of Merit
Activities: American Service Academies Program in Poland (selected to represent USNA in Poland in Service Academy program studying Holocaust and examining causes and techniques used by those engaged in genocide, as means to explore options for overcoming group-think and combating violent extremism); Platoon Sergeant (22nd Company); Squad Leader (Summer Seminar)

EXPERIENCE

Alston & Bird LLP, Washington, DC *Summer Associate*, June – August 2023

U.S. Attorney's Office for the Southern District of New York *Legal Intern*, June – August 2022
Conduct legal research, perform trial and witness preparation, and draft motions to assist two AUSAs in the General Crimes and National Security and International Narcotics Divisions.

Stanford Law School

Domestic Violence Pro Bono Project *Member*, September 2021 – Present
Support survivors of domestic violence by providing direct legal services. Seek civil remedies and relief on matters including family law and immigration issues.

Stanford Prisoner Advocacy and Resources Coalition (SPARC) *Member*, September 2021 – Present
Facilitate book club and LSAT tutoring for incarcerated women. Advocate for the women and their families.

Law Firm of William Mattar, PC, Buffalo, NY *Paralegal*, September 2020 – June 2021
Provided attorney support at high-volume personal injury law firm. Investigated claims, conducted client and witness interviews, organized and managed files, and performed legal research and writing.

United States Navy

Naval Surface Forces Atlantic, Norfolk, VA *Flag Administrative Support Officer*, April 2019 – August 2020
Led eight sailors supporting administrative preparation for the Type Commander, Chief of Staff, and Force Master Chief. Conceived and coordinated preparation of over 500 read-ahead binders and briefs. Rank: Lieutenant - Junior Grade.

USS Carney DDG-64, Rota, Spain *Main Propulsion Division Officer*, October 2017 – April 2019
Led twenty-five sailors who maintained and operated four LM2500 Gas Turbine Engines, three 501-K34 Gas Turbine Generators, and associated equipment providing power to *Arleigh-Burke-class* Destroyer. Oversaw requisition/tracking parts, inventory control, installation, and system restoration. Qualified as Surface Warfare Officer and Officer-of-the-Deck. Published "Nobody Asked Me But. . . Sexual Assault: Not in our Navy," *Proceedings Magazine,* Vol. 143/8/1,374. Aug. 2017. Rank: Ensign.

INTERESTS

Trying to travel to every country in the world, the Buffalo Bills, skydiving, bungee jumping, hang-gliding, volunteering at animal rescue shelter.

BRIDGET KENNEDY

114 River Oaks Drive, Grand Island, NY 14072 | bridget1@stanford.edu | (716) 748-1755

RECOMMENDERS

Professor Michele Landis Dauber
Stanford Law School
650-723-2512
mldauber@stanford.edu

Professor Robert Weisberg
Stanford Law School
650-723-0612
weisberg@stanford.edu

Professor Joanna Grossman
Stanford Law School Visiting Faculty
Southern Methodist University Law School
jlgrossman@smu.edu

REFERENCES

Nicholas Bradley
Assistant U.S. Attorney for the Southern District of New York
Nicholas.Bradley2@usdoj.gov

Margaret Lynaugh
Assistant U.S. Attorney for the Southern District of New York
margaret.lynaugh@usdoj.gov

Nicole Ziolkowski
Motor Vehicle Legal Assistants Supervisor at William Mattar Law Offices
nicolez@williammattar.com

Leland Stanford Jr. University
School of Law
Stanford, CA 94305
USA

Law Unofficial Transcript

Name : Kennedy,Bridget Bell
Student ID : 06605675

Print Date: 06/04/2023

--------- Academic Program ---------

Program : Law JD
09/20/2021 : Law (JD)
Plan
Status Active in Program

--------- Beginning of Academic Record ---------

2021-2022 Autumn

Course		Title	Attempted	Earned	Grade	Eqiv
LAW	201	CIVIL PROCEDURE I	5.00	5.00	P	
Instructor:		Freeman Engstrom, David				
LAW	205	CONTRACTS	5.00	5.00	P	
Instructor:		Sanga, Sarath				
LAW	219	LEGAL RESEARCH AND WRITING	2.00	2.00	H	
Instructor:		Thesing, Alicia Ellen				
LAW	223	TORTS	5.00	5.00	P	
Instructor:		Mello, Michelle Marie Studdert, David M				
LAW	240K	DISCUSSION (1L): REPRESENTATIONS OF CRIMINAL LAWYERS IN POPULAR CULTURE THROUGH THE LENS OF BIAS	1.00	1.00	MP	
Instructor:		Tyler, Ronald				

LAW TERM UNTS: 18.00 LAW CUM UNTS: 18.00

2021-2022 Winter

Course		Title	Attempted	Earned	Grade	Eqiv
LAW	203	CONSTITUTIONAL LAW	3.00	3.00	P	
Instructor:		O'Connell, Anne Margaret Joseph				
LAW	207	CRIMINAL LAW	4.00	4.00	P	
Instructor:		Fan, Mary D.				
LAW	224A	FEDERAL LITIGATION IN A GLOBAL CONTEXT: COURSEWORK	2.00	2.00	P	
Instructor:		Bakhshay, Shirin				
LAW	2402	EVIDENCE	5.00	5.00	P	
Instructor:		Fisher, George				

LAW TERM UNTS: 14.00 LAW CUM UNTS: 32.00

2021-2022 Spring

Course		Title	Attempted	Earned	Grade	Eqiv
LAW	217	PROPERTY	4.00	4.00	P	
Instructor:		Kelman, Mark G				
LAW	224B	FEDERAL LITIGATION IN A GLOBAL CONTEXT: METHODS AND PRACTICE	2.00	2.00	P	
Instructor:		Bakhshay, Shirin				
LAW	1013	CORPORATIONS	4.00	4.00	P	
Instructor:		Sanga, Sarath				
LAW	3518	LAW AND PSYCHOLOGY	3.00	3.00	P	
Instructor:		MacCoun, Robert J				

LAW TERM UNTS: 13.00 LAW CUM UNTS: 45.00

2022-2023 Autumn

Course		Title	Attempted	Earned	Grade	Eqiv
LAW	2002	CRIMINAL PROCEDURE: INVESTIGATION	4.00	4.00	H	
Instructor:		Weisberg, Robert				
LAW	5805	ANIMAL LAW	2.00	2.00	H	
Instructor:		Wagman, Bruce				
LAW	7030	FEDERAL INDIAN LAW	3.00	3.00	P	
Instructor:		Reese, Elizabeth Anne				
LAW	7820	MOOT COURT	2.00	2.00	MP	
Instructor:		Fenner, Randee J Pearson, Lisa M				

LAW TERM UNTS: 11.00 LAW CUM UNTS: 56.00

2022-2023 Winter

Course		Title	Attempted	Earned	Grade	Eqiv
LAW	2029	LAW AND DISORDER: ADVANCED CRIMINAL LAW	2.00	2.00	H	
Instructor:		Galvin-Almanza, Emily Van Waning Mills, David W				
LAW	7013	GENDER, LAW, AND PUBLIC POLICY	3.00	3.00	P	
Instructor:		Grossman, Joanna Lynn				
LAW	7065	ONE IN FIVE: THE LAW, POLITICS, AND POLICY OF CAMPUS SEXUAL ASSAULT	3.00	3.00	H	
Instructor:		Dauber, Michele Landis				
LAW	7820	MOOT COURT	1.00	1.00	MP	
Instructor:		Fenner, Randee J Pearson, Lisa M				

Worksheet - For office use by authorized Stanford personnel Effective Autumn Quarter 2009-10, units earned in the Stanford Law School are quarter units. Units earned in the Stanford Law School prior to 2009-10 were semester units. Law Term and Law Cum totals are law course units earned Autumn Quarter 2009-10 and thereafter.

Leland Stanford Jr. University
School of Law
Stanford, CA 94305
USA

Law Unofficial Transcript

Name : Kennedy,Bridget Bell
Student ID : 06605675

LAW TERM UNTS: 9.00 LAW CUM UNTS: 65.00

2022-2023 Spring

Course		Title	Attempted	Earned	Grade	Eqiv
LAW	400	DIRECTED RESEARCH	1.00	0.00		
Instructor:		Weisberg, Robert				
LAW	2001	CRIMINAL PROCEDURE: ADJUDICATION	4.00	0.00		
Instructor:		Weisberg, Robert				
LAW	2009	WHITE COLLAR CRIME	3.00	0.00		
Instructor:		Mills, David W				
LAW	6003	THE AMERICAN LEGAL PROFESSION	3.00	0.00		
Instructor:		Gordon, Robert W				

LAW TERM UNTS: 0.00 LAW CUM UNTS: 65.00

END OF TRANSCRIPT

Michele Landis Dauber
Frederick I. Richman Professor of Law
Professor, by courtesy, Sociology
559 Nathan Abbott Way
Stanford, California 94305-8610
650-723-2512
mldauber@stanford.edu

June 11, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to enthusiastically recommend Bridget Bell Kennedy for a clerkship in your chambers. I know Bridget extremely well. She was a student in my Winter 2023 class on the subject of gender-based violence. Bridget was the top student in the class and wrote an extraordinary final paper, which received an Honors grade. Bridget and I met frequently to discuss her progress on her research paper. Bridget is absolutely brilliant. As a graduate of the U.S. Naval Academy and a former military officer, Bridget brings a tremendous amount of talent, leadership, and persistence to all her endeavors. I am confident that she will be an exceptional law clerk and a formidable attorney.

Before arriving at Stanford Law School, Bridget graduated with Distinction and Honors from the U.S. Naval Academy and went on to distinguish herself as a naval officer in high-stakes, pressured environments as a chief propulsion officer on a forward-deployed destroyer. Here at Stanford Law, in a very different environment. Bridget's commitment to excellence has continued to shine through. Moving from her service as a naval officer to law school was a major transition that Bridget has navigated with determination and a stellar work ethic. She has received numerous Honors grades in addition to my course, including Legal Research and Writing, Advanced Criminal Law, and Criminal Procedure.

I would rank Bridget in the top 10% of law students I have taught in the past 20 years at Stanford, particularly given her stellar military leadership record. Bridget's final paper for my class was spectacular. In it, she conducted significant independent research, comparing and contrasting the handling of sexual assault at all three service academies as well as under the Title IX regime at non-military universities. She then recommended changes to both the military and civilian systems that relied on the best strategies from among the institutions she studied. This is an important piece of research that will help inform legislative policy efforts in this area. Moreover, in my class, I observed that Bridget works extremely well in a group setting where she listens thoughtfully to the input of others. She is always fully prepared, and her comments elevate every discussion. She is well-respected and viewed as a leader by peers and faculty.

In addition to her academic excellence, Bridget has unsurprisingly emerged as a leader among her peers. As a 2L (in 2023), she served as a senior editor of the Stanford Journal of International Law. She also participates in numerous pro-bono projects and student organizations, including the Stanford Law Veterans Organization.

After clerking, Bridget plans a career in criminal or international law. Her 1L summer was spent in the U.S. Attorney's office for the Southern District of New York. Due to her prior experience, she had the opportunity to work on National Security and International crimes, as well as general crimes. This coming summer, Bridget will work as a summer associate at a leading international firm. I have no doubt that she will quickly establish herself as a highly successful practitioner and leader in the field.

I recommend Bridget enthusiastically and without reservation. If you have any questions about this student or the foregoing, please do not hesitate to contact me via email or on my cell phone at 650-521-4046.

Sincerely,

/s/ Michele Landis Dauber

StanfordLawSchool

JENNY S. MARTINEZ
Richard E. Lang Professor of Law and Dean

Crown Quadrangle
559 Nathan Abbott Way
Stanford, CA 94305-8610
Tel 650 723-4455
Fax 650 723-4669
jmartinez@law.stanford.edu

Stanford Grading System

Dear Judge:

Since 2008, Stanford Law School has followed the non-numerical grading system set forth below. The system establishes "Pass" (P) as the default grade for typically strong work in which the student has mastered the subject, and "Honors" (H) as the grade for exceptional work. As explained further below, H grades were limited by a strict curve.

H	Honors	Exceptional work, significantly superior to the average performance at the school.
P	Pass	Representing successful mastery of the course material.
MP	Mandatory Pass	Representing P or better work. (No Honors grades are available for Mandatory P classes.)
MPH	Mandatory Pass - Public Health Emergency*	Representing P or better work. (No Honors grades are available for Mandatory P classes.)
R	Restricted Credit	Representing work that is unsatisfactory.
F	Fail	Representing work that does not show minimally adequate mastery of the material.
L	Pass	Student has passed the class. Exact grade yet to be reported.
I	Incomplete	
N	Continuing Course	
[blank]		Grading deadline has not yet passed. Grade has yet to be reported.
GNR	Grade Not Reported	Grading deadline has passed. Grade has yet to be reported.

In addition to Hs and Ps, we also award a limited number of class prizes to recognize truly extraordinary performance. These prizes are rare: No more than one prize can be awarded for every 15 students enrolled in a course. Outside of first-year required courses, awarding these prizes is at the discretion of the instructor.

* The coronavirus outbreak caused substantial disruptions to academic life beginning in mid-March 2020, during the Winter Quarter exam period. Due to these circumstances, SLS used a Mandatory Pass-Public Health Emergency/Restricted Credit/Fail grading scale for all exam classes held during Winter 2020 and all classes held during Spring 2020.

For non-exam classes held during Winter Quarter (e.g., policy practicums, clinics, and paper classes), students could elect to receive grades on the normal H/P/Restricted Credit/Fail scale or the Mandatory Pass-Public Health Emergency/Restricted Credit/Fail scale.

The five prizes, which will be noted on student transcripts, are:

- the Gerald Gunther Prize for first-year legal research and writing,
- the Gerald Gunther Prize for exam classes,
- the John Hart Ely Prize for paper classes,
- the Hilmer Oehlmann, Jr. Award for Federal Litigation or Federal Litigation in a Global Context, and
- the Judge Thelton E. Henderson Prize for clinical courses.

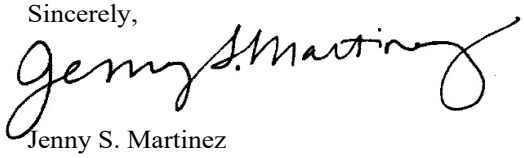
Unlike some of our peer schools, Stanford strictly limits the percentage of Hs that professors may award. Given these strict caps, in many years, *no student* graduates with all Hs, while only one or two students, at most, will compile an all-H record throughout just the first year of study. Furthermore, only 10 percent of students will compile a record of three-quarters Hs; compiling such a record, therefore, puts a student firmly within the top 10 percent of his or her law school class.

Some schools that have similar H/P grading systems do not impose limits on the number of Hs that can be awarded. At such schools, it is not uncommon for over 70 or 80 percent of a class to receive Hs, and many students graduate with all-H transcripts. This is not the case at Stanford Law. Accordingly, if you use grades as part of your hiring criteria, we strongly urge you to set standards specifically for Stanford Law School students.

If you have questions or would like further information about our grading system, please contact Professor Michelle Anderson, Chair of the Clerkship Committee, at (650) 498-1149 or manderson@law.stanford.edu. We appreciate your interest in our students, and we are eager to help you in any way we can.

Thank you for your consideration.

Sincerely,



Jenny S. Martinez
Richard E. Lang Professor of Law and Dean

Updated May 2020

Robert Weisberg
Edwin E. Huddleson, Jr. Professor of Law
Faculty Co-Director, Stanford Criminal Justice Center
Associate Dean for Curriculum
559 Nathan Abbott Way
Stanford, California 94305-8610
650-723-0612
weisberg@stanford.edu

June 11, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

Bridget Kennedy, Stanford, J.D. 2024, is a superb law student with all the proven analytic and writing skills you seek in your clerks. She will also come to your chambers with an absolutely amazing background as a military leader, a highly trained engineer, and a devoted civil rights lawyer-in-the-making.

I got to know Bridget quite well when she enrolled in my course in Criminal Investigation—that is the course on the Fourth and Fifth Amendments where the students must run the very difficult gauntlet of Supreme Court doctrine on searches and seizures and interrogations. She was a terrific class participant, acute and avid, and she wrote a terrific Honors level exam. My exams are notorious at the law school for being very difficult, time-pressured issues spotters. That is not necessarily a compliment to me, but it does mean that my exams really identify those with the most clerk-relevant skills. An excellent law student can have an unlucky bad day on my exam. A merely good law student cannot pull off a lucky Honors performance. And speaking of clerkship relevance, Bridget's Honors grade in our Legal Research and Writing course is further corroboration. I emphasize these courses because, in her first year, Bridget was adjusting to the discursive form of law school work after years at the Naval Academy and then in service, where detail memorization and quick analytic solutions to technical problems were the necessary modes of thinking. But again, I now have a very solid basis for inferring that she has fully cracked the code of legal doctrinal reasoning.

But let me turn to Bridget's background a bit more. Her undergraduate years were in Annapolis, at the U.S. Naval Academy, where she graduated with high honors in Oceanography while also engaged in social service programs. She then served in a number of leadership capacities as a naval officer. These are way beyond my understanding, except let me note that she was tasked to be a Chief Propulsion Officer, which means that she commanded tens of junior sailors in operating the vast and complex gas turbine technology that powered a 505-foot destroyer. So, to put it simply, this is a woman who can do anything, certainly anything, that she will encounter in her legal career. But also, while in the military, she dedicated herself to the reform of anti-sexual assault and harassment programs and ultimately was a leader in proposing and designing a reform program applied in both the service academies and actual service.

After her distinguished military career, Bridget turned to law, inspired in part by her father's past role as United States Attorney for the Western District of New York. Since coming to law school, she's thrust herself into a number of service activities, especially those dealing with prisoner advocacy and domestic violence. She's garnered internships with the U.S. Attorney for the Southern District of New York and with the famed Alston & Bird firm in Washington, D.C.

Bridget has also been drawing on her concerns about misconduct against women in the military in a very deep and broad research project. Her goal is to generate concrete reforms that can be implemented in the service academies and in active-duty service venues. This is great policy work, but it's also very hard technical legal work because it involves navigating the difficult statutory and regulatory rules of Title IX and the Clery Act. It should be a major contribution to the law on the subject.

So, Bridget will make a terrific member of your chambers team. If I can supply further information about Bridget, please let me know. Indeed, feel free to call me at your convenience via my cell phone: (650) 888-2648.

Sincerely,

/s/ Robert Weisberg

Joanna Grossman
Herman Phleger Visiting Professor of Law
Stanford Law School
Ellen K. Solender Endowed Chair in Women & Law and Professor of Law
SMU Dedman School of Law
559 Nathan Abbott Way
Stanford, California 94305-8610
650-723-2300
jlgrossman@mail.smu.edu

June 11, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am pleased to recommend Bridget Kennedy, who has applied for a clerkship in your chambers. Bridget is a wonderful student who brings an unusually interesting mix of experiences and talents to the table. She is a candidate to whom you should give your most serious consideration.

I met Bridget while serving as the Herman Phleger Visiting Professor at Stanford Law School. My permanent academic home is SMU Dedman School of Law in Dallas, Texas, where I hold the Ellen K. Solender Endowed Chair in Women and Law, but I regularly teach at Stanford as a visiting professor. With twenty-five years in law teaching, including several semesters at schools such as Stanford, Vanderbilt, and UNC, I am very familiar with the range of qualities that law students might possess—and familiar with the ones that promise successful clerkship experiences. I believe Bridget has the perfect blend.

Bridget took my Gender, Law, and Public Policy class this winter. This was a small class, where I got to know each student extremely well. The quality of the classroom discussions in this class was extraordinary. I attended Stanford Law School in the early 1990s and had taken this very class. Perhaps my memory deceives me, but I don't remember my classmates having the kind of insights and experience that I discovered in this group. Bridget stood out, even among this very talented group.

Although Bridget was quiet at first, she began to participate more and more as the class progressed. And I was so glad when she did. As you can see from her resume, Bridget did not follow the typical path to law school. She attended the United States Naval Academy and then served in the Navy. I can't even begin to relate to her experiences in the military, which are so far afield from my own education and work experience. (I have certainly never piloted a ship loaded with inter-continental ballistic missiles through the Bosphorus Straights in Turkey nor played a game of cat-and-mouse with a Russian submarine in the Black Sea.) But it is obvious to me that her time in a service academy and in the U.S. military has shaped her character and her skills, as well as her passion for public service. These experiences taught her how to handle pressure, how to adapt to a rapidly changing situation, and how to think on her feet. They also exposed her to different cultures and ideas and taught her how to connect to different types of people. She is empathic and enthusiastic and expects excellence from herself and those around her.

Bridget's time in the military also provided her, perhaps unintentionally, a deep understanding of so many issues that are fundamental to gender law: gender dynamics in a traditionally male-dominated field; the impact of biological gender differences on the performance of physical tasks; the challenges of responding to problems of discrimination, harassment, and sexual assault within an institution; the tension between the needs of the individual and the goals of a cohesive group; and so on. She came from those experiences believing both that "a rising tide raises all ships" and that institutions of civil society have to be attentive to the ways in which they might systematically disadvantage marginalized groups. Bridget managed to teach the rest of us so much by bringing her own hard-won experiences into the discussion of legal and policy issues. Her contributions were not simply anecdotes, although they would have been useful ones; she made sure to think about what her education and training had taught her that might be relevant to the questions posed by her classmates or me. Her comments also provoked new questions. I can honestly say that although I have been teaching this class for 25 years, I learned things from Bridget that will change the way I think about certain issues forever.

Bridget submitted excellent papers for this class, which demonstrated that her writing style is lucid and that her analytical abilities are strong. She also showed a talent for zeroing in on important issues and highlighting persuasive facts in constructing an argument. I always looked forward to reading her papers. After the class was over, Bridget asked if I would supervise a directed research paper on sexual assault in military service academies and at American colleges and universities. This issue is deeply important and personal to Bridget, and her interest in studying it fueled her desire to attend law school in the first place. For this project, she is engaging in a comparative analysis of the sexual assault prevention and response programs employed at the military service academies and those used at traditional colleges and universities under Title IX and the Clery Act. She is exploring the advantages and disadvantages of different approaches and advocating for a new approach that combines the best features and is more effective at reducing sexual assault at post-secondary institutions in the United States. Although I am back at SMU now, I am working with her on this project. She has done excellent research for this paper and has proven capable of adhering to an ambitious schedule for completing the different stages of the project. I have enjoyed talking to her about the project, to which she brings passion and a commitment to better understanding this complex issue. Although I have not yet seen

the final draft of the paper, I am confident it will confirm my very high opinion of Bridget's academic capabilities.

Bridget will make an excellent judicial clerk. As a former clerk to the late Judge William A. Norris, United States Court of Appeals for the Ninth Circuit, I know the qualities necessary to succeed in the job. She has strong legal research and writing skills, which are obviously essential. But she also has personal qualities that will ensure her success in this position. Her contributions in my class revealed the kind of careful reading and contemplation that I expect only from the very best students, yet she displayed none of the negative qualities that top students in a competitive environment sometimes exhibit. She is strong yet humble, careful yet brave, and extremely self-aware. Through her service in the military and eventually as a lawyer, Bridget seeks to better understand the world and make it a better place.

I urge you give Bridget every consideration. Please do not hesitate to contact me if you need any additional information. I can be reached at lawjlg@stanford.edu or (516) 617-7259.

Sincerely,

/s/ Joanna Grossman

Joanna Grossman - jlgrossman@mail.smu.edu

BRIDGET KENNEDY

114 River Oaks Drive, Grand Island, NY 14072 | bridget1@stanford.edu | (716) 748-1755

WRITING SAMPLE

I drafted the attached writing sample as an assignment in the Kirkwood Moot Court Competition. The assignment required drafting a Supreme Court brief with a partner analyzing whether the use of a pole camera by law enforcement constituted a search under the Fourth Amendment. I independently conducted all of the research pertaining to my section of the brief. I have included only those sections of the brief that I drafted exclusively. This brief reflects some input from my partner in terms of what arguments we were considering making and how to best align our portions of the brief, but it is unedited by them. By the assignment's instructions, the brief my partner and I composed could not exceed 12,000 words. We each composed approximately 50% of the brief.

INTRODUCTION

Respondent Rafael "Felipe" Tafoya (hereinafter "Respondent") operated a large-scale narcotics business out of his house in Colorado Springs. Every few months, pounds of cocaine and methamphetamine were delivered to his residence, and he, in turn, trafficked those drugs into the community. Police received a tip from an informant, and after corroborating much of it, decided to install a surveillance camera on a utility pole located across the street from Respondent's property. After approximately three months of surveillance, the seizure of nearly $100,000 in cash from a vehicle which had just left Respondent's house, and their observation of various incidents consistent with drug trafficking, police sought and obtained a search warrant for Respondent's property. During the execution of that warrant, police recovered eleven kilograms of methamphetamine, half a kilogram of cocaine, and $200,000 in cash.

This Court's jurisprudence has long recognized that the Fourth Amendment does not preclude police from observing that which is plainly in public view. Because the police never physically intruded upon Respondent's property and because the pole camera the police installed only viewed those areas of his residence which were in full view of his neighbors, its use did not constitute a search.

The Colorado Supreme Court, however, would throw this settled legal framework into question and with it the ability of police to conduct routine, high-quality work. Under its rule, police would be prohibited from using investigative tools for which a warrant would otherwise not be required, if, in aggregate, such police work produced a picture of a suspect's activities that was too complete. In other words, if police are too thorough in investigating a case, then they risk, under the Colorado Supreme Court's ruling, committing a Fourth Amendment violation. According to the Colorado Supreme Court, a Fourth Amendment violation occurred in this case

despite the fact that police never observed anything that was not in public view and never physically intruded nor trespassed upon any area in which Respondent possessed a reasonable expectation of privacy. Such an expansion of the definition of what constitutes a search under the Fourth Amendment—beyond a qualitative examination of the manner in which a particular government intrusion occurred and into a *post hoc* quantitative examination of how much information an otherwise constitutional government intrusion actually produced—is unwarranted and risks confusion not only in the lower courts but also in law enforcement. Accordingly, the decision of the Colorado Supreme Court should be reversed.

STATEMENT OF THE CASE

A. Factual Background

In early 2015, police received a call from a confidential informant (CI) about a potential narcotics "stash house" and site for narcotics transactions. App. 21. Although the CI did not provide the specific address, the CI did provide a description of the alleged stash house and of some of the vehicles known to be associated with the residence. App. 21-23. The CI identified "Felipe" as the owner of the house. App. 22. Following the call, police substantially verified the CI's information using publicly available property, utility, and vehicle records and by physically driving by the house. App. 88. To further corroborate the alleged narcotics trafficking occurring at Respondent's property, police installed a camera on a utility pole located across the street from the house on April 15, 2015. App. 24. The camera began recording on May 16, 2015. App. 11.

The pole camera police installed was stationary, although it had zoom, pan, and tilt features. App. 14. Even though the camera recorded 24 hours-a-day, 7 days-a-week, it did not have infrared or night vision features. App. 88-89. The camera did not have audio capabilities. App. 14. While police had the ability to go back and look at the recordings at any time, at most

times, the camera was not actively monitored. App. 24. Instead, the police would typically examine the footage closely only when they received tips that there was a drug transaction that was likely to transpire—as they did on June 25 and August 23. App. 12, 24-25. Footage that was not viewed live was more pixelated and less clear than live footage. App. 14. Police ended their surveillance of the property on August 24, 2015. App. 135.

The view from the pole camera was primarily of the front yard of Respondent's property. App. 25. The property had a chain link fence around the front yard. App. 65. The pole camera's view of the front yard was the same as that which one would have while walking on the sidewalk in front of the house. App. 65-66. The property also had a six-foot-high wooden fence which enclosed the backyard. App. 29. Such fence had spaces between its wooden slats, *id.*, and a portion of it was shared with Respondent's next-door neighbor, App. 41-42. Law enforcement confirmed that looking between the slats in the fence would allow an observer to see the same activity in Respondent's backyard that the pole camera could see. App. 29.

The wooden fence had a gate that allowed vehicles to enter the backyard, where the driveway continued into a garage. App. 17. There was also a "Beware of Dog" and "No Trespassing" sign affixed to the fence. App. 79. The backyard contained a garage as well as a small shed. App. 26. The garage had a moving overhead door. App. 66. When the garage door was open, the pole camera, if actively monitored with the use of the zoom function, provided a view of only the very upper portions of the garage but did not allow police to see what was occurring inside the garage. App. 67. The pole camera's view of the backyard was the same view that a utility worker would have if they were doing work on top of the pole. App. 34.

Although a different vantage point, the pole camera's view of the backyard was also similar to the view from a two-story apartment building that was located adjacent to

Respondent's property. App. 34, 61. The apartment building rises well above the six-foot wooden-slat fence that surrounds the rear of Respondent's property. The stairs up to and landings at the second-story apartments provided a particularly clear view into Respondent's backyard. App. 61. Notably, any person located in those areas—neighbors, guests, delivery persons, or others—could view the same activities captured by the pole camera. App. 46, 51, 54, 61.

On June 25, 2015, police received a second tip from a CI about drug trafficking at the residence. App. 73. The CI alleged that a narcotics transaction would occur at Respondent's property that day. *Id.* In response to the tip, a police detective actively monitored the pole camera and observed what he believed to be a narcotics transaction. *Id.* Specifically, the detective observed two males arrive in a car at Respondent's property. App. 17. Respondent opened the fence to let the vehicle into the backyard area of his property. *Id.* Once the vehicle was behind the fence that surrounded Respondent's backyard, several individuals, together with Respondent, began to perform some work underneath the same car in which the two men had arrived. *Id.* The detective observed the men carry empty white garbage bags to the car, work on the car for a bit, then carry the same, now-full bags back to Respondent's garage. App. 19. The police were unable to see what was in the bags or what was done with the bags after they were carried into the garage. *Id.*; App. 35.

The detective then noticed a pick-up truck arrive at Respondent's property. App. 19. Upon the truck's arrival, the men appeared to change one of the truck's spare tires. *Id.* The pick-up truck then left the property. App. 20. After the truck had left Respondent's property, police pulled the truck over for a traffic violation and searched the vehicle whereupon they found $98,000 in currency in the truck's spare tire. App. 38-39. The currency contained traces of narcotics. App. 39.

On August 23, 2015, the police received a third tip about possible drug trafficking at the residence. App. 74. Specifically, the police were told that a narcotics transaction was going to take place at the residence the next day, August 24. *Id.* As a result, detectives actively monitored the pole camera feed on the 24th. *Id.* Police saw the same car that they had previously observed arrive at the premises on June 25 pass through the gate and into the backyard. App. 41-44. The police then saw Respondent access the driver's side area of the car and follow the same pattern as had been observed on June 25: men walked to the car with empty white trash bags and then walked away from the car and into the garage with full bags. App. 42. As during the June transaction, police could not see what was happening inside the garage nor what was inside the bags. *Id.*; App. 43.

Based on their observations of pole camera footage, police sought and obtained a warrant for Respondent's property. App. 44. Respondent's property was secured in anticipation of obtaining the warrant. *Id.* During the warrant's execution, police discovered two of the aforementioned white garbage bags in the garage. *Id.* One bag contained five pounds of methamphetamine and a half-kilogram of cocaine; the other bag contained fifteen pounds of methamphetamine. *Id.* Inside the car, police discovered $172,000 in cash. *Id.* A codefendant at the residence had $7,200 in cash on his person, and police found $28,000 in cash in the bedroom of Respondent's house. App. 45. The police later found two plastic bags containing two pounds of methamphetamine and a half-kilogram of cocaine located in the bed of a pickup truck that had again recently left Respondent's property. *Id.*

B. Procedural History

Respondent was charged with two counts of possession with intent to distribute controlled substances (methamphetamine and cocaine) and two counts of conspiracy to commit

such crimes. App. 88. He moved to suppress all evidence obtained as a result of the pole camera surveillance, including the evidence seized pursuant to the search warrant, arguing that police use of the camera violated the Fourth Amendment. *Id.* The trial court denied the motion, finding that Respondent did not have a reasonable expectation of privacy in what was occurring behind his wooden fence because that area was exposed to the public, and therefore the use of the pole camera did not constitute a search. App. 95.

Subsequently, Respondent was found guilty on all counts and was sentenced to fifteen years' imprisonment. App. 105. Respondent appealed, and the Colorado Court of Appeals reversed his conviction and remanded the case for a new trial, after concluding that the three-month-long use of the pole camera constituted a search under the Fourth Amendment. *People v. Tafoya*, 490 P.3d 532, 534 (Colo. App. 2019); App. 98. The State, in turn, appealed that decision, and the Supreme Court of Colorado determined, as the Court of Appeals did, that the continuous use of the pole camera by the police to conduct video surveillance of Respondent's fenced-in property for three months constituted a warrantless search in violation of the Fourth Amendment. *People v. Tafoya*, 494 P.3d 613, 615 (Colo. 2021); App. 32. This Court granted certiorari. App. 158.

SUMMARY OF THE ARGUMENT

[Section omitted as it was mutually composed together with my moot court partner]

ARGUMENT

I. The Use of a Utility Pole Camera to Monitor Activities Visible to the Public Was Not a Search Under the Fourth Amendment.

A. This Court Has Long Recognized That There Is No Reasonable Expectation of Privacy in Information That Is Exposed to the Public View.

The Fourth Amendment protects the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. This Court has employed two separate tests to determine whether government conduct is a search within the meaning of the Fourth Amendment. Specifically, this Court has recognized that a Fourth Amendment search occurs when the government either physically intrudes, without consent, upon "a constitutionally protected area in order to obtain information," *United States v. Jones*, 565 U.S. 400, 407 (2012), or otherwise infringes on an "expectation of privacy that society is prepared to consider reasonable," *United States v. Karo*, 468 U.S. 705, 712 (1984). To establish a reasonable expectation of privacy, Respondent must show "first that [he] . . . exhibited an actual (subjective) expectation of privacy and, second, that [his] expectation [is] one that society is prepared to recognize as [objectively] 'reasonable.'" *Katz v. United States*, 389 U.S. 347, 361 (1967) (Harlan, J., concurring); *see also California v. Ciraolo*, 476 U.S. 207, 211 (1986).

The Fourth Amendment does not, however, protect what "a person knowingly exposes to the public, even in his own home or office," *Katz*, 389 U.S. at 351, or curtilage, *see Ciraolo*, 476 U.S. at 213. Moreover, police are not required "to avert their eyes from evidence of criminal activity that could have been observed by any member of the public." *California v. Greenwood*, 486 U.S. 35, 41 (1988). As a result, even in situations in which it might be unlikely or impracticable that a member of the public would observe an individual's activities, so long as such activities are observable by the public, this Court has refused to recognize a reasonable expectation of privacy simply because it was the police rather than the public that made such observations. *See, e.g.*, *Florida v. Riley*, 488 U.S. 445, 450-51 (1989) (finding that a homeowner had no objectively reasonable expectation of privacy that his greenhouse was protected from

public or official observation from a helicopter lawfully flying 400 feet over property); *Dow Chem. Co. v. United States*, 476 U.S. 227, 239 (1986) ("[N]othing in [aerial] photographs [of an industrial plant complex from navigable airspace] suggests that any reasonable expectations of privacy have been infringed."); *Greenwood*, 486 U.S. at 41 ("[S]ociety would not accept as reasonable respondents' claim to an expectation of privacy in trash left for collection in an area accessible to the public."); *United States v. Knotts*, 460 U.S. 276, 281 (1983) (upholding use of radio transponder to track vehicle because a person generally "has no reasonable expectation of privacy in his movements from one place to another" because such movements are "voluntarily conveyed to anyone who want[s] to look").

Even in situations in which an individual establishes a subjective expectation of privacy by, for example, taking some precautions to shield his activities from public observation, the test for the legitimacy of that expectation "is not whether the individual chooses to conceal assertedly 'private' activity," but instead "whether the government's intrusion infringes upon the personal and societal values protected by the Fourth Amendment." *Ciraolo*, 476 U.S. at 212, 213-14 (recognizing that a "10-foot fence might not shield [illicit] plants [being grown behind such fence] from the eyes of a citizen or a policeman perched on the top of a truck or a two-level bus" and upholding legitimacy of aerial surveillance of such plants on the grounds that "respondent's expectation that his garden was protected from such observation is unreasonable and is not an expectation that society is prepared to honor")

That which this Court considers "observable to the public" is not limited to unenhanced visual observation alone. This Court permits law enforcement to use technology to "augment the sensory faculties bestowed upon them at birth" without violating the Fourth Amendment. *Knotts*, 460 U.S. at 282. Notably, the video camera at issue in this case was not a form of technology that

provided law enforcement with information that was "otherwise unknowable." *See Carpenter v. United States*, 138 S. Ct. 2206, 2218 (2018). Nor did it provide information which could not have been otherwise obtained without using advanced technology to effectively enter the home. *See, e.g.*, *Florida v. Jardines*, 569 U.S. 1, 12-14 (2013) (Kagan, J., concurring) (using a drug-sniffing dog to investigate the contents of the home is a search), *with Kyllo v. United States*, 533 U.S. 27, 40 (2001) (using a thermal-imaging device to see the "intimate details" within a home constitutes a search).

In this case, the police used a pole camera located in public space—and not on Respondent's property—to observe portions of Respondent's property that were otherwise lawfully visible to his neighbors. There was no trespass or physical intrusion on Respondent's property, and consequently, whether the installation and use of the pole camera constituted a search in this case is entirely dependent upon whether Respondent is able to demonstrate, in accordance with *Katz*, that he had a reasonable expectation of privacy in the areas captured by the pole camera.

That Respondent's property, including most crucially his backyard, was visible to the public is plain. Any utility technician conducting routine maintenance work on the utility pole to which the camera was attached could have seen into his backyard. App. 34. In addition, the fence surrounding Respondent's property had spaces between the slats that his neighbors could have easily looked through over extended periods of time. App. 29. Most importantly, the adjacent multi-story apartment complex, rising high above Respondent's fence, offered a nearly unimpeded view of Respondent's backyard, including those areas captured by the pole camera. App. 34, 61. Together, these facts militate strongly against the notion that Respondent had a subjective expectation of privacy in the area captured by the pole camera; his neighbors could

see all that was happening. Yet, even if Respondent was able to establish such a subjective expectation of privacy, it was not objectively reasonable. Whatever was captured by the pole camera could have also been captured by the eye (or cell phone or video camera) of any member of the public or law enforcement living or positioned on the upper floors of the adjacent apartment building. The probability that a neighbor would look into Respondent's backyard in the intermittent way in which police actually watched the pole camera footage was likely not meaningfully less than the probability that, for example, someone in a passing aircraft would look into the property. *Riley*, 488 U.S. at 450-51; *Dow Chem. Co.*, 476 U.S. at 239. Thus, as in *Riley* and *Dow Chemical,* there can be no reasonable expectation of privacy. Moreover, that police chose instead to use a more efficient technology to carry out this equivalent, constitutional observation of public activities does not offend the Fourth Amendment. They were, in this Court's parlance, merely "augment[ing]" their natural abilities. *See Knotts*, 460 U.S. at 282.

Nor does the presence of Respondent's fence and "No Trespassing" sign put the area off limits to police observation. Even if the fence and signs suggest Respondent's "subjective expectation of privacy" in the area it surrounded, to be valid, it must also be an "expectation that society is prepared to recognize as reasonable." *Katz*, 389 U.S. at 361. Given that the backyard was plainly visible to the public surrounding Respondent's property, this expectation should not be considered "objectively reasonable." *Katz*, 389 U.S. at 361. The "mere fact that an individual has taken measures to restrict some views of his activities" does not preclude a police officer from nonetheless observing them provided she does so from where she has a right to be and from which she can clearly see the activities in question. *Ciraolo*, 476 U.S. at 213. *Ciraolo* involved a defendant who had erected a ten-foot-high fence—more than one and one-half times as tall as the fence in this case—in a similarly suburban area. *Id.* at 209. Yet this Court held that the existence

of the fence did not render the homeowner's asserted expectation of privacy to be objectively reasonable. *Id.* at 213. By extension, the same minimal weight must be given to the privacy fence here. To hold otherwise would risk predicating an individual's Fourth Amendment protections exclusively on their own subjective beliefs. To grant individuals the opportunity to immunize their illicit activities exclusively by taking ineffective precautions to shield their criminality from the observations of others is objectively unreasonable and something which neither our society nor this Court should sanction. As the Second Circuit has aptly noted, if an individual were to run around their backyard naked, it would be unreasonable for them to expect this act to be private, and "there is no reason why the judiciary should clothe similarly located drug traffickers in cloaks of invisibility." *United States v. Lace*, 669 F.2d 46, 51 (2d Cir. 1982).

B. The Fourth Amendment Does Not Prohibit Police from Using Widely Available Technology To Conduct Visual Surveillance Of Publicly Exposed Information.

Advancing technology has drastically changed society's reasonable expectations of privacy and further militates against finding a reasonable expectation of privacy against video camera surveillance from stationary pole cameras. While this Court in *Jones* suggested that there may be situations in which the use of electronic technology to collect evidence which might have otherwise been obtained through traditional visual or physical surveillance might amount to an "unconstitutional invasion of privacy," it also went on to note that, "[t]his Court has to date not deviated from the understanding that mere visual observation does not constitute a search." *Jones*, 565 U.S. at 412 (citing *Kyllo*, 533 U.S. at 31-32).

Additionally, although this Court has cautioned that the government's use of some technologies falls within the ambit of the Fourth Amendment, it has also reaffirmed the principle that "[n]othing in the Fourth Amendment prohibit[s] the police from augmenting the sensory

faculties bestowed upon them at birth with such enhancement as science and technology afforded them in certain instances." *Knotts*, 460 U.S. at 282.

Where the Court has recognized that law enforcement's use of technology constituted a Fourth Amendment search are in those instances in which the police use "a device that is not in general public use, to explore details of the home that would previously have been unknowable without physical intrusion." *Kyllo*, 533 U.S. at 40. In such situations, this Court has concluded that the use of such technology constitutes a Fourth Amendment search "and is presumptively unreasonable without a warrant." *Id.* In *Kyllo*, the Court held that the government's use of a thermal imaging device that detects relative heat levels within a residence amounted to an unlawful search in violation of the Fourth Amendment. While the thermal imaging device did not physically intrude on the defendant's property, the Court expressed concern about "leav[ing] the homeowner at the mercy of advancing technology." *Id.* at 35.

Unlike the "advanc[ed]" technology at issue in *Kyllo*, however, cameras are commonplace in society, and this Court has therefore unsurprisingly routinely approved their use by law enforcement to aid investigations. In *Dow Chemical*, the Court held "that the taking of aerial photographs of [a 2,000-acre] industrial plant complex from navigable airspace is not a search prohibited by the Fourth Amendment." 476 U.S. at 239. The Court acknowledged that "the technology of photography has changed in this century," *Id.* at 231. It went on to say:

> It may well be . . . that surveillance of private property by using highly sophisticated surveillance equipment not generally available to the public, such as satellite technology, might be constitutionally proscribed absent a warrant. But the photographs here are not so revealing of intimate details as to raise constitutional concerns. Although they undoubtedly give [the government] more detailed information than naked-eye views, they remain limited to an outline of the facility's buildings and equipment.

Id. at 238. "The mere fact that human vision is enhanced somewhat, at least to the degree here, does not give rise to constitutional problems" because the aerial photography cameras—like the pole camera—did not raise the "far more serious questions" presented by a device that could "penetrate walls or windows so as to hear and record confidential discussions." *Id.* at 238-39.

Similarly, in *Ciraolo*, decided the same day as *Dow Chemical*, the Court concluded that the police did not violate the Fourth Amendment when they observed and photographed the defendant's marijuana plants while flying 1,000 feet overhead in a private plane. *Ciraolo*, 476 U.S. at 209-10. The Court explained that although the defendant may have demonstrated a subjective expectation of privacy by erecting fences, society was not prepared to accept that expectation as reasonable because the government surveilled "within public navigable airspace . . . in a physically nonintrusive manner." *Id.* at 213. In other words, "[a]ny member of the public flying in this airspace who glanced down could have seen everything that these officers observed." *Id.* at 213-14. Most recently, this Court has expressly declined to "call into question conventional surveillance techniques and tools, such as security cameras." *Carpenter*, 138 S. Ct. at 2220.

Recently, the Seventh Circuit decided a case which is factually similar to this one and involved the use of three pole cameras in furtherance of a narcotics trafficking investigation, which captured nearly eighteen months of footage of the defendant's property. *United States v. Tuggle*, 4 F.4th 505, 511 (7th Cir. 2021), *cert. denied*, 142 S. Ct. 1107 (2022). Along the way to its ultimate conclusion that the prolonged use of the pole cameras did not constitute a Fourth Amendment search, the court recognized that in the interconnected, globalized, and digital world we live in today, Americans have "largely accept[ed] that cell phones will track their locations, their Internet usage will leave digital footprints, and ever-watching fixed cameras will monitor

their movements." *Id.* at 510, 529. The court further recognized that so long as the "government moves discreetly with the times, its use of advanced technologies will likely not breach society's reconstituted (non)expectations of privacy." *Id.* at 510. In other words, when police employ a technology that is in general public use, or put differently, is not ahead of the times of the public, then its use need not be considered a search.

Here, the type of surveillance camera at issue is most certainly readily available to the public and readily used by them as well. As the *Tuggle* court observed, "cameras are ubiquitous, found in the hands and pockets of virtually all Americans, on the doorbells and entrances of homes, and on the walls and ceilings of businesses." *Id.* at 516. In addition, Ring doorbells, Simplisafe, ADT security, and a host of other home security systems marketed to ordinary consumers typically have cameras that function similarly to—if not with more advanced technology than—the pole camera here. These cameras can generally zoom and pan, and can be placed anywhere on someone's property, and thus the fact that the pole camera employed here had the ability to pan, tilt, and zoom features assuredly does *not* make it a "far cry" from the extremely sophisticated technology that is readily available to the public. *Id.* This camera could not see or hear through walls, nor did it afford the police the capacity to "explore details of the home that would previously have been unknowable without physical intrusion." *Id.* (*quoting Kyllo*, 533 U.S. at 40) In fact, it did not go beyond the run-of-the-mill video or surveillance camera that has been widely used for decades and can be purchased at virtually any electronics retailer.

C. Pole Camera Observation Does Not Raise the Same Privacy Concerns That Motivated the GPS Tracking and CSLI Exceptions to This Long-Established Legal Framework.

[Omitted as it was mutually composed together with my moot court partner]

1. Pole Cameras Cannot Collect Sufficient Sensitive Information to Invade the Privacies of Life.

[Omitted as it was mutually composed together with my moot court partner]

2. Pole Cameras Remain Too Labor-Intensive for Law Enforcement to Problematically Scale Up Their Use.

[Omitted as it was mutually composed together with my moot court partner]

3. Unlike CSLI, Pole Cameras Cannot Recreate Retrospective Data from Before the Suspect Was Under Investigation.

[Omitted as it was mutually composed together with my moot court partner]

II. Extending Jones and Carpenter Would Introduce Considerable Confusion for Lower Courts and Law Enforcement.

[Omitted as it was mutually composed together with my moot court partner]

III. Legislatures Can Regulate Pole Cameras More Effectively Than the Fourth Amendment Can.

[Omitted solely for length purposes. Can provide upon request]

IV. Even if the Pole Camera Was a Search, It Was Reasonable Under the Fourth Amendment.

[Omitted as it was mutually composed together with my moot court partner]

CONCLUSION

For the foregoing reasons, this Court should reverse the judgment of the Supreme Court of Colorado suppressing the evidence in this case.

Applicant Details

First Name	**Adrian**
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Last Name	**Kibuuka**
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Contact Phone Number	**2405352342**

Applicant Education

BA/BS From	**Towson University**
Date of BA/BS	**May 2021**
JD/LLB From	**University of Maryland Francis King Carey School of Law** **http://www.nalplawschoolsonline.org/ndlsdir_search_results.asp?lscd=52102&yr=2011**
Date of JD/LLB	**May 15, 2024**
Class Rank	**Not yet ranked**
Law Review/ Journal	**Yes**
Journal(s)	**Maryland Law Review**
Moot Court Experience	**Yes**
Moot Court Name(s)	**Maryland Carey Law Moot Court Board**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**Yes**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

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This applicant has certified that all data entered in this profile and any application documents are true and correct.

Adrian Kibuuka
4 Heritage Farm Court ● Montgomery Village, MD 20886

June 12, 2023

The Honorable Jamar Walker
United States District Judge
U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA
401 Courthouse Square
Alexandria, VA 22314

Dear Judge Walker:

I am a third-year student at the University of Maryland Francis King Carey School of Law who wishes to become your judicial law clerk for the 2024–2025 term. I have a passion for litigation and writing and desire the opportunity to explore and develop in this position.

Throughout my legal career, attorneys and mentors have advised me to find work settings where I bring value and settings that align with my goals. For those reasons, I chose your chambers. Your criminal law experience intrigues me due to my own interest in criminal law. During my 2L fall semester, my Criminal Procedure Professor constantly hosted federal public defenders along with Assistant United States Attorneys ("AUSA"). These attorneys regaled us with various cases as they applied to the material we were learning at the time. It was a worthwhile experience as it breached the gap between theory and practice. Seeing your extensive criminal law experience as an AUSA, I knew I had to apply to your chambers. In hopes to continue learning from experienced veterans in the criminal law arena, your tutelage, and insight would be priceless and highly beneficial for my future.

As for my career as a law student, I started my journey at Widener in Delaware, where I finished my first year in the top 20% of my class. Additionally, I was elected to the Black Law Students Association executive board. I subsequently transferred to Maryland Carey Law. At my new school, I successfully petitioned Maryland Law Review. I also competed in the school's annual Moot Court Competition, which earned me a seat on the school's Moot Court Board. Additionally, I built a great rapport with classmates, professors, and Maryland alums. This summer at Bekman, Marder, Hopper, Malarkey & Perlin, LLC, I worked with attorneys on various assignments. These included topics such as products liability and other work, including drafting legal memoranda and motions, along with attending meetings and mediations.

As your law clerk, I plan to bring the same vigor and commitment to success displayed in the past. My strengths include adaptability and multitasking. Both were shown when I transferred law schools and successfully petitioned Maryland Law Review and the Moot Court Board. Even more, I worked for the Honorable Matthew J. Maddox as a judicial intern, which provided insight into working in the intimate setting of a judge's chambers. These experiences strengthened my skills, and I plan to continue in the same vein.

Thank you for taking the time to read this cover letter, and I hope I am granted an interview with you. You can contact me by phone at (240) 535-2342 or via email at akkibuuka@umaryland.edu. I look forward to hearing from you.

Sincerely,

Adrian Kibuuka

Adrian K. Kibuuka

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Education

University of Maryland Francis King Carey School of Law, Baltimore, MD
Juris Doctor Candidate, May 2024

- GPA: 3.17/4.0
- *Maryland Law Review*, Notes and Comments Editor
- *Moot Court Board*, Treasurer
- Black Law Students Association

Towson University, Towson, MD
Bachelor of Science, May 2021

- GPA: 3.2/4.0

Legal Experience

Bekman, Marder, Hopper, Malarkey and Perlin, LLC, Baltimore MD
Summer Associate, May 2023 – August 2023

- Conduct research and write legal memorandums for attorneys
- Attend mediations and depositions
- Proofread motions for attorneys

U.S. District Court for the District of Maryland, Baltimore, MD
Judicial Extern to The Honorable Matthew J. Maddox, January 2023 – April 2023

- Conducted legal research
- Worked alongside the clerk to draft opinion recommendations for Judge Maddox
- Drafted a bench memorandum for Judge Maddox

Advancing Real Change (ARC Life), Baltimore, MD
Summer Intern, Summer 2022

- Assisted mitigation specialists on defense teams for indigent clients, with the goal of developing an accurate, multi-dimensional account of the client's life.
- Assisted with investigating circumstances of the offense.
- Conducted case research, and exhaustive records searches.

Law Office of Frank J. Coviello, Gaithersburg, MD
Law Intern, September 2016 – May 2017

- Gained valuable insight and experience as to all facets of administration and operations of a small law office; gathered required documentation to set up new client files.
- Communicated effectively with clients to enhance current and prospective relationships.

Other Experience

Costco's Depot, Monrovia, MD
Depot Clerk, July 2019 – August 2021

- Lead Associate in the Receiving Department. Received and delivered new merchandise; interacted with vendors and handled returns.

Catholic Campus Ministries, Newman Center, Towson University, Towson, MD
Towson Chapter Treasurer, August 2019 – May 2020

- Led the Newman community as an Executive Board Member.
- Partnered with Chaplain and President to organize club events and managed budget for the club to the University Student Government Association.
- Spearheaded program that reduced Archdiocese costs by securing larger budget from the University.

Skills/Languages

Lexis+, WestLaw Edge, Budget Analysis;
Proficient in Luganda.

OFFICIAL TRANSCRIPT

Patricia A. Scott
University Registrar
University of Maryland, Baltimore

Student No: @00323087 Date Issued: 05-JUN-2023

Record of: Adrian K Kibuuka Page: 1
Current Name: Adrian K. Kibuuka

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Course Level: School of Law

Current Program
Major : Law

SUBJ	NO.	COURSE TITLE	CRED	GRD	PTS	R
TRANSFER CREDIT ACCEPTED BY THE INSTITUTION:						
2021-2022		WIDENER UNIV SCHOOL OF LAW				
LAW	065Y	TRANSFER COURSE	1.00	TR		
LAW	506A	CRIMINAL LAW	3.00	TR		
LAW	527A	CIVIL PROCEDURE	4.00	TR		
LAW	528A	CON LAW I: GOVERNANCE	2.00	TR		
LAW	530A	CONTRACTS	4.00	TR		
LAW	534A	PROPERTY	6.00	TR		
LAW	535A	TORTS	6.00	TR		
LAW	550A	INTRODUCTION TO LEGAL RESEARCH	1.00	TR		
LAW	564A	LAWYERING I	3.00	TR		
LAW	565A	LAWYERING II	2.00	TR		
Ehrs: 32.00 GPA-Hrs: 0.00 QPts: 0.00 GPA: 0.00						
INSTITUTION CREDIT:						
Fall 2022						
LAW	515H	CRIMINAL PROCEDURE	3.00	B+	9.99	
LAW	521T	WILP: ADV APPELLATE ADVOCACY	3.00	B+	9.99	
LAW	523S	THURGOOD MARSHALL SEMINAR	3.00	B+	9.99	
LAW	529A	CON LAW II: INDIVIDUAL RIGHTS	3.00	B-	8.01	
LAW	578F	EVIDENCE	3.00	B+	9.99	
Ehrs: 15.00 GPA-Hrs: 15.00 QPts: 47.97 GPA: 3.20						
Spring 2023						
LAW	514A	LEGAL PROFESSION	2.00	B	6.00	
LAW	530D	MOOT COURT: MYEROWITZ COMP	1.00	CR	0.00	
LAW	531C	MARYLAND LAW REVIEW	1.00	CR	0.00	
LAW	544S	ASPER JUDICIAL EXT WORKSHOP	1.00	CR	0.00	
LAW	576F	ESTATES AND TRUSTS	3.00	B+	9.99	
LAW	580B	FAMILY LAW	3.00	B	9.00	

********** CONTINUED ON NEXT COLUMN **********

SUBJ	NO.	COURSE TITLE	CRED	GRD	PTS	R
Institution Information continued:						
Ehrs: 11.00 GPA-Hrs: 8.00 QPts: 24.99 GPA: 3.12						
IN PROGRESS WORK						
LAW	516B	ASPER JUDICIAL EXTERNSHIP	4.00	IN PROGRESS		
In Progress Credits 4.00						
Fall 2023						
IN PROGRESS WORK						
LAW	531D	MOOT COURT BOARD	2.00	IN PROGRESS		
LAW	537U	CRIMINAL APPELLATE CLINIC	4.00	IN PROGRESS		
LAW	563S	WRIT LW PRAC:AD WR FED CIV LIT	3.00	IN PROGRESS		
LAW	568G	TRIAL PRACTICE	3.00	IN PROGRESS		
LAW	572C	BUSINESS ASSOCIATIONS	3.00	IN PROGRESS		
LAW	576G	ADV LEG RESEARCH(DISTANCE EDU)	1.00	IN PROGRESS		
In Progress Credits 16.00						

********** TRANSCRIPT TOTALS **********

	Earned Hrs	GPA Hrs	Points	GPA
TOTAL INSTITUTION	26.00	23.00	72.96	3.17
TOTAL TRANSFER	32.00	0.00	0.00	0.00
OVERALL	58.00	23.00	72.96	3.17

********** END OF TRANSCRIPT **********

June 19, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

It is with great pleasure that I write to recommend Adrian Kibuuka for a judicial clerkship. Mr. Kibuuka is a skilled writer, exceptional researcher, and a well-rounded orator. He would be an asset to any chambers, and I recommend him without hesitation.

I met Mr. Kibuuka when he was a student in my Advanced Appellate Advocacy course at the University of Maryland Carey School of Law. Early in the semester, he stood out among his colleagues. He participated in class by asking insightful questions and fostered a productive dialogue about the issues. He quickly grasped fundamental legal principles while diving further into the nuances of the cases. He came to me often to discuss various matters so that he could better grasp the concepts and did not hesitate to reach out for guidance when he needed it. Throughout the semester, it was very clear to me that he genuinely cared about learning the materials and mastering writing, not just getting a high grade.

Mr. Kibuuka's written product demonstrated exceptional growth throughout the semester. In each and every draft, his writing grew more concise, pointed, and persuasive. By the end of the term, he learned to skillfully weave the facts into the law and logically present his positions while imparting a theme for the reader and addressing critical public policy concerns.

At oral argument, Mr. Kibuuka was poised, prepared, and passionate, arguing as if he had been an appellate advocate for years. He addressed questions directly while effortlessly transitioning back to his prepared statements. He responded to myriad issues succinctly while remaining composed and professional. All three judges on the panel commended him for his calm, even keeled demeanor and his command of the facts and case law.

Having known and worked with Mr. Kibuuka, I can say that he has a personality that one desires in a coworker. He is kind, thoughtful, humble, and open-minded. His ability to soak up information like a sponge, learn from his mistakes, and constantly improve is a quality that I truly admire about him. In my opinion, those attributes are the most coveted and scarce among applicants.

Mr. Kibuuka has the skill and acumen to succeed well above expectations in a judicial clerkship. If I can be of any further assistance, please do not hesitate to contact me.

Very truly yours,

Anthony J. May

Anthony May - amay@browngold.com - 4109621030

June 14, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to offer enthusiastic support for Adrian Kibuuka's application to serve as your law clerk. After a full career in practice, and then serving 14 years on the U.S. Bankruptcy Court for the District of Maryland, I have been teaching at University of Maryland Carey Law since 2021. Last semester, I taught evidence and that is how Adrian and I met. I have been impressed with his tenacity, drive and intellect since the very first day of class. He is a very smart young man and a very hard worker.

He approached me as soon as that first class ended, told me he was interested in becoming a federal law clerk and asked me how to reach that goal. Following up on my suggestions, Adrian contacted the Honorable (Ret.) Gerald Bruce Lee of the Eastern District of Virginia and became involved in Just The Beginning – a Pipeline Organization's program geared towards nurturing a meritorious and diverse judicial workforce through, in part, sharing the wealth of law clerk positions and internships. Adrian is dedicated to serving the judiciary – and the community it serves – and has a well-developed sense of the enormous benefits to be gained by a young lawyer because of that experience.

I require my students to earn twenty percent of their evidence grade through oral participation in class. That participation usually consists of reviewing a case or two assigned for that evening's class and addressing one or more of the hypothetical problems included in the casebook. Adrian was one of the first to volunteer and he did a splendid job explaining, Tuer v McDonald, 347 Md. 507 (1997). Tuer analyzed Maryland's equivalent of Federal Rule of Evidence 407 and its application in a medical malpractice case where the hospital's standard course of treatment was changed following the death of the plaintiff's husband. Suffice to say that the reasoning is not easy to grasp even for practicing lawyers, yet Adrian captured all the important nuance and excelled in his presentation.

I make my final exam tough because I want my students to be challenged and I believe the public interest demands that only qualified attorneys practice law, especially in the courtroom. Adrian received a B+, and I consider that to be an excellent grade. Nevertheless, he still asked me to review his responses to pinpoint how he could have done better. He accepted my critique with humility and thoughtfulness. Since then, we have stayed in contact and have continued to maintain a strong, mentoring relationship. I am pleased to acknowledge his fine attributes and would support his effort for any high quality legal position.

All of this adds up to an excellent lawyer in the making and I strongly recommend Adrian for a position as your law clerk. I would be happy to answer any questions you may have. I am,

Very truly yours,

_____ /s/ _____
Robert A. Gordon

June 20, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am honored to recommend Mr. Adrian Kibuuka for a state or federal judicial clerkship. Mr. Kibuuka was a student in Constitutional Law I: Governance, which I taught at the University of Maryland Carey School of Law during the fall 2022 semester and he is presently doing an independent written work project with me on regulation of the internet for the spring 2023 semester. Mr. Kibuuka had a fine performance in Constitutional Law I, marred only by some time problems on the examination, to be considered.below. He is writing an excellent paper on the responsibility of internet carriers for hate speech that appears on their platforms. On the basis of this experience and approximately twenty years of law school teaching, I am confident that Mr. Kibuuka is destined to be a fine member of the bar and an excellent judicial clerk. He merits serious consideration for any chamber in Maryland.

Mr. Kibuuka performed well in Constitutional Law I. His class attendance was perfect in mind and body. He regularly sat in the fourth row on the left and, if memory serves me correctly, was present for every class. He was not on the original roster and therefore was not on my original call list. He noticed this (not me) and on his initiative (I would have never noticed) got back on the list and served as an expert in several cases. Experts are grilled for at least fifteen minutes on the facts, legal reasoning and consequences of the assigned case. Mr. Kibuuka was excellent in all areas. He would recite the facts of the cases as diverse as Blaisdell v. Home Mortgage and Loan (contracts clause) and Kennedy v. Bremerton School District (religious freedom). He had masted the doctrinal elements of each case and could apply that doctrine to new fact patterns. His responses moved the class forward. Mr. Kibuuaka was as articulate and professional when he volunteered responses to questions in class. He has strong opinions, particularly on the capacity of an eighteenth-century constitution to govern a twenty-first century regime. When discussing free speech law made by people who could not imagine a telegraph, much less the internet, he was able to demonstrate a mastery of past doctrine and the problems applying past doctrine to present cases. The result was he was one of the more respected voices in the class.

The first three-quarters of Mr. Kibuuaka's final examination were consistent with his performance in the class. He did A/A- work on the issue spot. Almost without fail, Mr. Kibuuaka was able to identify constitutional issues, identify the relevant constitutional provision and precedent, and apply the law to the hypothetical facts. His take-home essay was solid, if a little conventional. Mr. Kibuuka defended the doctrines associated with living constitutionalism and explained why consistent with those doctrines some past decisions he thought mistaken were ripe for overruling, while others were not. He wrote clearly and persuasively If the exam had included only 10 multiple choice questions, his grade would have been between a B+ and an A-. Alas, the examination included 30 multiple choice questions. Mr. Kibuuka ran out of time, missed a bunch of questions and failed to put down any answer for the last 10. The result was a B- (had he merely put 10 A's in a row for the last ten questions (or otherwise given random answers), the probably of getting 2-3 right would have bumped his grade to a B.

The good news from your perspective is that my experience with Mr. Kibuuka indicates that this was a test problem, not a more general time-management problem. Mr. Kibuuka is presently doing independent written work under my supervision. His concern is the regulation of the internet. When I agree to supervise a student, we agree on a timeline for doing various steps in the project. Inevitably, the student falls behind. Mr. Kibuuka, is the welcomed exception. He was supposed to have an abstract at the beginning of the semester. I received his abstract the week before the semester started. He was two weeks early with a draft of his section on existing law. In short, the evidence indicates that when Mr. Kibuuaka performs normal tasks under normal time pressures, he is exceptionally responsible. He simply failed to manage his time well in a three hour law examination, which had some unique features. On the assumption that a clerkship will not included short timed exercises, Mr. Kibuuka can be trusted to perform every assigned task in the allotted time.

Mr. Kibuuka's promised paper identifies an interesting and important problem in free speech law. The Communications Decency Act, the primary vehicle for the regulation of speech on the internet was, as the name indicates, primarily aimed at obscenity and pornography. As such, the statute deals only indirectly with the issues of hate speech that now saturate cyberspace. Worse, the first amendment law of hate speech was made at a time when speech was largely effervescent. As Justice Jackson pointed out in 1951, if a speech made at that time did not have an immediate effect, the speech was highly likely to have no effect and never be rememberd. The internet keeps speech alive. A call for genocide issued today by an obscurity living in Cleveland may inspire a murderer in Ghana two years later. Free speech and internet law has not yet caught out with the times. Mr. Kibuuka is thinking and thinking clearly what such a law might look like in the twenty-first century. He has forgotten more than I know about the internet and teaching me everyday about the technologies. His paper promises to similarly educate the legal public.

Mr. Kibuuka is an excellent candidate for a federal and judicial clerkship. He excelled at the University of Baltimore School of Law before transferred to Maryland Carey Law. He had a strong first semester at Maryland, minus the grade in my course, which was entirely the result of a unique time management problem. He speaks and writes clearly. He demonstrated a mastery of doctrine when speaking in my class and demonstrates even greater mastery when describing the caselaw on regulation of the internet. I have never had to ask Mr. Kibuuka to explain what he is saying or writing. The prose is both sophisticated and readable. While he needs some work on his examination time-management skills, in normal human situations he is an exceptionally responsible

Mark Graber - mgraber@law.umaryland.edu - (410) 706-2767

young adult. Mr. Kibuuka is a self-starter who will consistently be part of the solutions in your chambers and never part of the problem. For all these reasons, he has my strong recommendation for a federal or state judicial clerkship.

If there is more information you need about this outstanding young student, I can be reached at the University of Maryland Carey School of Law (500 W. Baltimore Street, Baltimore, MD 21201), at 410-607-2767 (during the pandemic, my home number, 301-588-0119, is probably better) or at mgraber@law.umaryland.edu. Thank you for your kind consideration.

Yours truly,

Mark A. Graber
Regents Professor
University of Maryland Carey School of Law

This writing sample was from the 2023 Myerowitz Moot Court Competition. It was part of my submitted appellate brief. It has been condensed into the case summary, questions presented, and argument for brevity purposes.

CASE SUMMARY

Five years ago, the City of Pawnee suffered a significant loss, as the mini horse "Lil Sebastian" passed away. R. at 4. The horse was a local legend, and his death caused riots in Pawnee. *Id.* The Pawnee Police Department ("PPD") responded by implementing First Amendment training for PPD officers to address future riots adequately. *Id.* Two years ago, Petitioner Ron Swanson anonymously created a Facebook page purporting to be the PPD's official Facebook page. R. at 2. Petitioner took care to make the fake page nearly identical to the official PPD page, mirroring the official name, profile picture, and cover picture of the official PPD page. *Id.*

Petitioner posted six times on the fake PPD page, with each post causing either confusion and concern or laughter. R. at 3. PPD officers were concerned and alerted to the fake page because the page's information was false. R. at 3. Thus, PPD officer, Officer Burt Macklin, appeared on "Ya Heard? With Perd!," a local television show, and stated that the creator of the fake page would be "found and brought to justice." *Id.* This alerted Petitioner of the pending investigation. *Id.* It was only then that Petitioner deleted the fake page. *Id.*

Officer Macklin consulted with Officer Bobby Newport, another PPD officer, who identified that Petitioner violated a local statute prohibiting using computers to disrupt police functions. *Id.* The officers subsequently arrested Petitioner. R. at 4. At trial, Petitioner was acquitted and filed two claims, alleging that the arresting officers, Macklin and Newport, violated Petitioner's free speech rights and that the City of Pawnee had inadequately trained its police officers. *Id.* These claims are at issue: (1) qualified immunity for officers Macklin and Newport; (2) municipal liability for the City of Pawnee.

QUESTIONS PRESENTED

I. PPD officers arrested Petitioner for creating a fake online Facebook page mirroring the official PPD Facebook page. R. at 2. The page confused Pawnee residents, leading some to believe stealing was legal. R. at 11. Nonetheless, Petitioner avers the arrest was in retaliation for exercising his constitutional rights. R. at 4. Are the arresting officers shielded from liability for retaliatory arrest under the doctrine of qualified immunity?

II. Whether a city is municipally liable for failing to train its police officers on the First Amendment when the City's police officers have yet to violate the city residents' constitutional rights.

ARGUMENT

I. POLICE OFFICERS BURT MACKLIN AND BOBBY NEWPORT ARE ENTITLED TO QUALIFIED IMMUNITY.

A party seeking relief under 42 U.S.C. § 1983 must establish that the alleged offenders, "under color" of law, violated the claimant's federal Constitutional or statutory rights, resulting in injury. 42 U.S.C. § 1983. However, qualified immunity "shields government officials" in such cases from undue interference or hindering of official or discretionary duties. *Reichle v. Howards*, 566 U.S. 658, 664 (2012); *see also Pearson v. Callahan*, 555 U.S. 223, 231 (2009) ("Qualified immunity balances two important interests—the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably.").

When analyzing whether a defendant is entitled to qualified immunity, courts consider two prongs: (1) whether the facts alleged, construed most favorably to the claimant, establish a constitutional violation; and (2) whether that right was "clearly established" at the time the alleged misconduct occurred. *Id.* A right is "clearly established" when a reasonable official would have known that the official's acts violated that right. *See Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011) ("In other words, existing precedent must have placed the statutory or constitutional question beyond debate.").

Furthermore, even when a purported right is established, an official is entitled to qualified immunity if the official establishes that he acted reasonably. *See Anderson v. Creighton*, 483 U.S. 635, 641 (1987) (holding that if the petitioner can prove that a reasonable officer would have believed that the warrantless search of the respondent's home was lawful, the petitioner is entitled to qualified immunity). Lastly, the analysis is not sequential; courts may grant qualified immunity solely under the second prong "without resolving the often more difficult question [of]

whether the purported right exists at all." *Reichle*, 566 U.S. at 664; *see also Ashcroft*, 563 U.S. at 735 (noting that courts should be cautious about consuming judicial resources to resolve difficult constitutional questions that have no bearing on the outcome of a case). Failure to meet either prong results in qualified immunity for the alleged tortfeasor. *Pearson*, 555 U.S. at 232.

A. Petitioner Is Asserting a Constitutional Right to Be Free From An Arrest Supported By Probable Cause.

Petitioner here asserts a claim against officers Macklin and Newport, arguing that Petitioner had a constitutional right to be free from retaliatory arrest under the First Amendment, pursuant to 42 U.S.C. § 1983. R. at 5. But this misses the mark. If the arrest is supported by probable cause, then the retaliation claim is irrelevant. *Karns v. Shanahan*, 879 F.3d 504, 522 (3d Cir. 2018); *but see Nieves v. Bartlett*, 139 S. Ct. 1715, 1727 (2019) (holding that if officers have probable cause for a particular crime but the claimant proves officers do not ordinarily arrest violators of the relevant statute, the retaliation claim should be allowed to proceed). Therefore, the right to be free from an arrest supported by probable cause is the underlying right in Petitioner's claim.

The district court identified that Petitioner's Facebook page here was a parody, thereby protected under the First Amendment. *Swanson v. Macklin*, 455 F. Supp. 7th 25, 21 (D. Harvest. 2021); *see generally Hustler Mag., Inc. v. Falwell*, 485 U.S. 46, 56–57 (1988) (identifying parodies as protected speech); *see also* U.S. CONST. amend. I. However, that court neglected to address whether the arrest was otherwise supported by probable cause. This is important because if an arrest alleged to be made in retaliation is supported by probable cause, this Court has upheld it. *Reichle*, 566 U.S. at 669. Essentially, probable cause provides a constitutional basis that, if proven, justifies the arrest. *Id.* at 665.

B. There Is No Established Constitutional Right To Be Free From An Arrest Supported By Probable Cause.

This Court addressed the right to be free from a retaliatory arrest supported by probable cause in *Reichle v. Howards*. 566 U.S. at 669. There, the plaintiff sued Secret Service ("SS") agents for a retaliatory arrest. *Id.* at 659. The arrest had been made after the SS agents observed the plaintiff encounter a former United States Vice President and thereby deemed the plaintiff a threat. *Id.* This Court ruled against the plaintiff, holding that there is no clearly established right to be free from a retaliatory arrest supported by probable cause. *Id.* at 666. This Court observed that prior precedent barring claims for retaliatory prosecution was unclear regarding retaliatory arrests. *Id.* And so, reasonable officers like the SS agents were likely to question whether the rule against retaliatory prosecution applied to retaliatory arrests. *Id.*

Here, because officers Macklin and Newport had probable cause to arrest Petitioner, they are entitled to qualified immunity.

1. The arrest was supported by probable cause.

Officers Macklin and Newport had probable cause to arrest Petitioner. Courts employ an objective test to determine whether an arrest is supported by probable cause. *Karns*, 879 F.3d 523. The analysis draws on the "facts available to the officers at the moment of arrest." *Id.* (quoting *Beck v. Ohio*, 379 U.S. 89, 96 (1964)). Probable cause is a question for the jury. *Id.* Still, a court may conclude—as a matter of law—whether the evidence before that court, when viewed in favor of the plaintiff, would not reasonably support a contrary factual outcome. *Id.* When conducting this analysis, a court assesses the statute's elements and whether they match the arrest to determine whether the arresting officers had met probable cause. *Id.*

The relevant statute here is as follows: Pawnee Revised Code § 300.12(a): "No person shall [1] *knowingly* [2] use any *computer*, computer system, computer network,

telecommunications device, or *other electronic device* or system or the *internet* [3] so as to disrupt, interrupt, or impair the functions of any *police*, fire, educational, commercial, or governmental operations." (emphasis added). Petitioner's claim fails on all three elements.

First, Petitioner knew of his acts. Petitioner "anonymously created a Facebook page parodying the" PPD. R. at 2. He mirrored the official PPD page, using the "same name, profile picture, and cover picture" as the PPD page. R. at 2. In doing so, Petitioner would have exhausted resources such as time to research the PPD official Facebook page to guarantee similar likeness. Moreover, after the PPD warned of investigating the fake page, Petitioner copied the PPD's warning onto his fake PPD page. R. at 3. He then deleted the page only after Officer Macklin stated that "the creator of the parody page would be found and brought to justice…." R. at 4. These actions were voluntary and evinced knowledge of criminality. *See Forster v. United States*, 237 F.2d 617, 620 (9th Cir. 1956) ("An act is done knowingly if done voluntarily and purposely…." (internal quotation marks omitted)).

Secondly, Petitioner used several enumerated mediums to violate Pawnee Revised Code § 300.12(a). One of these was Facebook. R. at 2. Facebook is an internet telecommunications platform. Mark Hall, *Facebook*, ENCYCLOPEDIA BRITANNICA (Feb. 06, 2023, 3:47 PM), https://www.britannica.com/topic/Facebook. It therefore meets at least one category within the statute: the internet. PAWNEE REV. CODE § 300.12(a). Petitioner used Facebook to create his page and thereby met the second element. R. at 2. Additionally, his arrest record states that he used "a computer to disrupt police operations." R. at 13. A computer is another of the enumerated mediums of the violated statute, and in using it, Petitioner satisfied the second element. PAWNEE REV. CODE § 300.12(a).

Thirdly, Petitioner disrupted and impaired the functions of the police. The record stated that because of Petitioner's Facebook posts, Pawnee citizens made ten calls to the PPD concerned and confused after seeing Petitioner's posts. R. at 12. Despite the calls coming from a non-emergency phone line, they were made repeatedly in just two days, requiring officers to appear on multiple local shows to discuss the pending investigation. R. at 12. For example, the PPD police chief, Ben Wyatt, appeared on the show "Pawnee Today[,]" to specifically discuss the fake Facebook page investigation. R. at 3. Likewise, PPD officers lost opportunities to undertake other police tasks during the times the PPD was responding to Petitioner's crime, evidencing disruption under the third element.

Similarly, Petitioner's actions led to the FBI's involvement in the PPD investigation. R. at 3. Officer Macklin relied on his friend within the FBI as a resource to devote toward investigating Petitioner. *Id.* Not only was that diverting PPD officers but also federal officers in the FBI from other opportunities, implicating two separate "police" organizations. The statute does not limit the affected "police" to the PPD. PAWNEE REV. CODE § 300.12(a). In essence, Petitioner was doubly violating the statute because he cost the FBI and the PPD opportunities to undertake other official tasks. Resultantly, Petitioner met the third element of PAWNEE REV. CODE § 300.12(a).

Given that Petitioner violated the statute, probable cause to arrest him was plausible. In arresting him, the officers were not violating any "clearly established" right to be free from an arrest otherwise supported by probable cause. *See Mitchell v. Forsyth*, 472 U.S. 511, 530 (1985) (holding that because warrantless wiretaps were not unconstitutional when the government used them, the government did not violate an established constitutional right). If such a right now exists, it did not at the time of the arrest. *See Mitchell*, 472 U.S. at 535 ("[O]fficials performing

discretionary functions are not subject to suit when such questions are resolved against them only after they have acted."); *see also Anderson*, 483 U.S. at 640 ("[O]ur cases establish that the right the official is alleged to have violated must have been 'clearly established' in a more particularized, and hence more relevant, sense….").

2. Even if probable cause was not met, officers Macklin and Newport acted reasonably.

Assuming arguendo that probable cause did not exist, PPD officers Macklin and Newport are still entitled to qualified immunity because they acted reasonably in arresting Petitioner. Officers who "reasonably but mistakenly conclude that probable cause is present" are entitled to qualified immunity. *Hunter v. Bryant*, 502 U.S. 224, 227 (1991). This is because public policy is better served in protecting against potential criminality, albeit actions mistaken for criminality, before the crime affects more citizens. *See Harlow v. Fitzgerald*, 457 U.S. 800, 817 (1982) ("[W]here an official's duties legitimately require action in which clearly established rights are not implicated, the public interest may be better served by action taken with independence and without fear of consequences." (internal quotations omitted)).

Here, the officers' actions were reasonable. The calls to the PPD regarding the fake page placed them on high alert. R. at 3. For example, one caller assumed stealing was legal thanks to Petitioner's post validating stealing on the fake page. R. at 7. PPD Officer J. Jamm immediately informed the caller that stealing was a crime. R. at 11. A reasonable mind could conclude that Petitioner's misinformation promoted crime as the caller may have relied on it to steal. Likewise, Officer Macklin "properly applied for and obtained a search warrant for" Petitioner's cabin. R. at 3. The search yielded the computer indicating Petitioner as the fake PPD Facebook page creator. R. at 12. Obtaining a warrant requires probable cause to search the area listed, which a neutral magistrate must approve. U.S. CONST. amend. IV. These actions by PPD officers showed the

officers were not randomly arresting Petitioner, but rather acting accordingly. Hence, Petitioner's arrest was reasonable.

Any "mistakes" the officers allegedly made are of no moment. This Court has addressed potential errors, holding that officers can make mistakes in the interest of justice. *See Anderson*, 483 U.S. at 641 ("We have recognized th[e]…inevitab[ility] that law enforcement officials will in some cases reasonably but mistakenly conclude that probable cause is present, and we have indicated that in such cases those officials…should not be held personally liable."). Likewise, qualified immunity balances such costs. *Id.* at 638 (highlighting that qualified immunity accommodates the social costs of unduly inhibiting officials executing official duties). Officers Macklin and Newport here acted reasonably in investigating and arresting Petitioner. If this Court finds the officers lacked probable cause to conduct the arrest, the officers are still entitled to qualified immunity, given that the investigation and arrest were objectively reasonable.

II. THE CITY OF PAWNEE ADEQUATELY TRAINED THE CITY POLICE OFFICERS.

The City's police officers were adequately trained, and the City should not be held municipally liable under 42 U.S.C. § 1983. Congress intended § 1983 liability to apply to municipalities and all other local governments as included among the "person[s]" enumerated within the statute. *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 690 (1978); *see also* 42 U.S.C. § 1983 (permitting civil suit against any person acting under municipal authority that deprives another individual of that individual's rights guaranteed by the Federal Constitution and federal laws). Municipality liability under § 1983 is established when the "municipality itself" causes the alleged constitutional violation. *City of Canton v. Harris*, 489 U.S. 378, 385 (1989); *see also Connick v. Thompson*, 563 U.S. 51, 60 (2011) (emphasizing that municipalities are only responsible for illegal municipality actions).

Courts assessing municipal liability examine whether there is a "direct causal link between a municipal policy or custom and the alleged constitutional deprivation." *Id.* Both constitutional and unconstitutional municipal policies are actionable under § 1983. *Id.* If a municipal policy is constitutional but unconstitutionally applied by a municipal employee, the municipality is liable if the employee was inadequately trained and the inadequate training caused the constitutional wrong. *Id.* at 387. Such § 1983 inadequate training ("failure to train") claims succeed in only limited circumstances. *Id.*; *Connick*, 563 U.S. at 61 ("A municipality's culpability for a deprivation of rights is at its most tenuous where a claim turns on a failure to train."). Lastly, when alleged against a municipality, liability for failure to train police officers is only established when the inadequacy amounts to "deliberate interference" to the rights of those with whom the police encounter. *Id.* at 388.

Accordingly, Petitioner must prove: (1) the municipality employed an inadequate training program as part of the municipality's policy; (2) the municipality was "deliberately indifferent" to the constitutional violations of its inadequate training program; and (3) the municipality's inadequate training program actually caused the injury giving rise to the § 1983 claim in the case *sub judice*. *City of Canton*, 489 U.S. 378; *see generally Marcilis v. Twp. of Redford*, 693 F.3d 589, 605 (6th Cir. 2012) ("To prevail on a failure to train…claim, the plaintiff must prove the following: (1) the training or supervision was inadequate for the tasks performed; (2) the inadequacy was the result of the municipality's deliberate indifference; and (3) the inadequacy was closely related to or actually caused the injury." (internal quotation marks omitted)). Here, Petitioner did not meet the requisite elements.

A. The Pawnee Police Department Employed an Adequate Training Program For Pawnee Police Officers.

Before assessing the adequacy element, courts first establish that the policy at issue was the municipality's official policy. *Connick*, 563 U.S. at 61. This is demonstrated in three circumstances: (1) when the municipality's local government enacts a lawmaking decision; (2) acts by the municipality's policymakers; and (3) acts performed throughout the municipality that are essentially its custom, carrying the force of law. *Id.* With each circumstance, the municipality is the actor. *Id.*

Turning to the first element—adequacy—courts look to the tasks performed by the employees (in this case, officers) and how the deficient program impacts the officers' tasks. *Id.* at 390. The program must have applied overtime to multiple employees. *Bd. of Cnty. Comm'rs of Bryan Cnty., Okl. v. Brown*, 520 U.S. 397, 407 (1997). Similarly, a training program is not inadequate for failure to train claims when a single employee acts out because liability in such circumstances would entail *respondeat superior* liability. *Cf. Taber v. Maine*, 67 F.3d 1029, 1037 (1995) (defining *respondeat superior* liability generally as employer liability for any faults of the employer's employees); *see also Monell*, 436 U.S. at 691 ("[A] municipality cannot be held liable under § 1983 on a respondeat superior theory.").

Here, the allegedly deficient training policy was Pawnee's failure to "sufficiently train its officers on the First Amendment." R. at 5. The policy includes the PPD training all its first-year officers on the First Amendment and an additional four-hour constitutional law training which may consist of the same first-year First Amendment training. R. at 4, 14. The training is limited to officer behavior during protests. *Id.* The PPD policy is hence considered a Pawnee custom or policy that essentially carries the force of law because the city mandates it for its police officers. *See Connick*, 563 U.S. at 61; R. at 14.

Petitioner is unsatisfied with the PPD policy and calls on the department (as a municipality actor) for more. R. at 4. But the First Amendment training was implemented in response to riots after the death of "Lil Sebastian[,]" a "mini horse" that was a Pawnee local legend. R. at 4. Pawnee has never struggled with other First Amendment issues nor other constitutional violations since implementing the policy five years ago. R. at 4; *City of Canton*, 489 U.S. at 390 (observing that the adequacy of a police training program focuses on the program's relation to the tasks that the city's officers perform). Therefore, the PPD responded adequately to the town's needs by enacting a policy that was relevant and impactful to the Pawnee locals. R. at 14.

B. Because The Pawnee Police Department Training Program Was Adequate, The City of Pawnee Could Not Be On Notice Of Unconstitutional Behavior By Police Officers.

Nor can Petitioner establish that the PPD was "deliberately indifferent" to any constitutional violations of its allegedly inadequate training program. *City of Canton*, 489 U.S. at 378. The "deliberately indifferent" standard is a stringent standard of fault that requires a showing that the municipal actor ignored the potential consequences of its actions. *Connick*, 563 U.S. at 61. This standard is met when the municipal actors are on notice for policies (or lack thereof), causing municipal employees to behave unconstitutionally toward citizens. *Id.* In such instances, the municipal actors are deemed "indifferent" toward the constitutional violations, compounding into the entire municipality violating the Constitution. *City of Canton*, 489 U.S. at 395. Additionally, claimants must display a pattern of constitutional violations resulting from the allegedly deficient policy, otherwise, the municipality cannot be deemed on notice of the alleged deficiency. *Comm'rs of Bryan Cnty.*, 520 U.S. at 409. However, courts may find a single instance of inadequate training sufficient to meet the "deliberately indifferent" standard when the

failure to train is "so obvious" that the municipality can be said to have been "deliberately indifferent" to that deficiency. *Id.*

Here, Pawnee did not have a single case of the PPD policy, causing police officers to engage in unconstitutional misbehavior toward Pawnee residents.[1] Thus, there was no pattern of unconstitutional violations by the PPD regarding Pawnee residents' First Amendment rights, negating the municipality's potential notice of such violations. *See Connick*, 563 U.S. at 62 ("Without notice that a course of training is deficient in a particular respect, decisionmakers can hardly be said to have deliberately chosen a training program that will cause violations of constitutional rights."). This Court has never found a single instance of deficient training equating to a "deliberately indifferent" municipality. It should not do so here.

C. Pawnee's Police Training Policy Did Not Cause Swanson's Alleged Injury.

Finally, Petitioner cannot show that the municipality's allegedly deficient policy actually caused any injury. *City of Canton*, 489 U.S. at 390. Petitioner must establish that the municipality was the "driving force" behind the injury and that the municipality intentionally deprived Petitioner of a federal right. *See Comm'rs of Bryan Cnty.*, 520 U.S. at 404 ("[A] plaintiff must show that the municipal action was taken with the requisite degree of culpability and must demonstrate a direct causal link between the municipal activity and the deprivation of federal rights."). Petitioner cannot prove any such deprivation.

[1] The closest the record came to the PPD violating Pawnee residents' First Amendment rights was the training for city protests. R. at 4. For this Court to hold this case's single alleged instance "so obvious" to render Pawnee "deliberately indifferent" would significantly lower this stringent standard. *See City of Canton*, 489 U.S. at 387 (hypothesizing that in a narrow set of circumstances, a failure to train claim may succeed without a pattern of constitutional violations if it is highly predictable that law enforcement's failure to furnish adequate tools to officers would result in constitutional violations).

When a claimant does not claim that the municipality directly inflicted injury upon the claimant, the municipal liability standard to be met is heightened to avoid *respondeat superior* liability. *See Connick*, 563 U.S. at 70 ("[P]roving that a municipality itself actually caused a constitutional violation by failing to train the offending employee…[requires] a stringent standard of fault, lest municipal liability under § 1983 collapse into respondeat superior."). Like the "deliberate indifference" element, a pattern of constitutional violations is pertinent to this analysis. *Comm'rs of Bryan Cnty.*, 520 U.S. at 408–09. This pattern makes it more likely that because the municipality previously acquiesced to similar violations, it followed suit in the instant case. *See id.* (observing that where the plaintiff points to "no other incident tending to make it more likely that the plaintiff's own injury flows from the municipality's action," it is not "readily apparent that the municipality's action caused the injury in question[]").

Here, Petitioner is not arguing that Pawnee, as a municipality, directly caused his alleged injury. R. at 5. Rather, Petitioner avers that a failure to train PPD officers on the First Amendment caused his alleged injury. *Id.* This purported injury was the arrest after creating and posting on the Facebook page, in which Petitioner believed he was exercising his First Amendment rights. R. at 4. As seen in the record, no First Amendment violations resulted from the PPD implementing its constitutional training policy before Petitioner's allegations. R. at 4. Consequently, there is no direct cause from or past instances of the PPD policy inflicting a single, let alone a similar alleged injury to Petitioner or other Pawnee residents. Moreover, even if the policy caused Petitioner's arrest and trial, there was a separate cause for his arrest. R. at 4. He was charged with committing a felony. R. at 4. If the PPD reasonably believed Petitioner committed that felony, the PPD would be required to arrest Petitioner. *See* PAWNEE REV. CODE

§ 300.12(a); *see also* 18 U.S.C. § 4 (criminalizing concealment of or knowledge of the commission of a felony without reporting such crime).

It must be reiterated that succeeding on a failure to train claim is a high burden. *See Weiland v. Palm Beach Cnty. Sheriff's Off.*, 792 F.3d 1313, 1328 (11th Cir. 2015) ("In limited circumstances, a local government's decision not to train certain employees…to avoid violating citizens' rights may rise to the level of an official government policy for purposes of § 1983.") (quoting *Connick*, 563 U.S. at 61). Moreover, officers are not flawless. *See City of Canton*, 489 U.S. at 391 ("[A]dequately trained officers occasionally make mistakes; the fact that they do says little about the training program or the legal basis for holding the city liable."). Finally, additional training does not guarantee fewer errors. *See Connick*, 563 U.S. at 68 (highlighting that although demonstrating that additional training may be helpful to officers in making a difficult decision, that does not establish municipal liability). Hence, the PPD's policy here was adequate and this Court should affirm the district court's grant of a motion for summary judgment on the municipal liability issue.

Applicant Details

First Name	**Ciera**
Middle Initial	**B**
Last Name	**Killen**
Citizenship Status	**U. S. Citizen**
Email Address	**ckillen@wm.edu**
Address	**Address** Street **9654 14th View St** City **Norfolk** State/Territory **Virginia** Zip **23503** Country **United States**
Contact Phone Number	**5405605884**

Applicant Education

BA/BS From	**College of William and Mary**
Date of BA/BS	**May 2018**
JD/LLB From	**William & Mary Law School** **http://law.wm.edu**
Date of JD/LLB	**May 16, 2024**
Class Rank	**25%**
Law Review/Journal	**Yes**
Journal(s)	**William & Mary Bill of Rights Journal**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**Yes**

Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Spencer, A. Benjamin
spencer@wm.edu
751.221.3790
Leonard, Lawrence
mary_beth_kopso@vaed.uscourts.gov
Bellin, Jeffrey
jbellin@wm.edu
757-221-7364

This applicant has certified that all data entered in this profile and any application documents are true and correct.

9654 14th View Street
Norfolk, VA 23503
(540) 560-5884
ckillen@email.wm.edu

June 8, 2023

The Honorable Jamar K. Walker
U.S. District Court, Eastern District of Virginia
600 Granby Street
Norfolk, VA 23510

Dear Judge Walker:

I am a second-year student at William & Mary Law School applying for a one-year clerkship in your chambers beginning in 2024. As a lifelong Virginia resident, with an interest in pursuing a career in prosecution in the Norfolk area, I am seeking to apply my research, writing, and professional skills to support your chambers. I really enjoyed interning at the Norfolk courthouse specifically and would be incredibly excited to return.

My experiences as a judicial intern, faculty research assistant, and as an editorial member on the *William & Mary Bill of Rights Journal* have prepared me to contribute to your chambers. In my judicial internship with the Honorable Lawrence R. Leonard, I researched and wrote a bench memorandum analyzing a novel issue on whether magistrate judges have the authority to expunge the arrest record of a person who was never convicted. I examined magistrate judges' opinions from within the Fourth Circuit in order to determine that magistrate judges have the authority and jurisdiction to expunge arrest records. I also prepared an eighteen-page bench memorandum recommending summary judgment, an assignment that required extensive research into the theory of judicial estoppel. Additionally, I drafted multiple memoranda recommending action on complicated discovery motions where parties disputed both facts and relevant legal standards.

My experience conducting an analysis of how courts apply the Federal Rules of Civil Procedure as a research assistant for Dean Spencer has also prepared me for a clerkship. In my extensive review of judicial opinions, I had the opportunity to analyze novel ways courts interpreted the Rules and communicate my findings to the Dean to support his updates to a Federal Practice and Procedure treatise. As one of two second-year students on my journal's executive board, I have conducted two cite checks, an articles editor edit, and three executive editor edits. Each stage required me to verify citations, quoted content, grammar, and formatting in order to prepare articles for publication. I am currently conducting research and writing for my note which focuses on the abolishment of the indigency standard when making the decision to grant court appointed lawyers. This topic has required extensive analysis of Sixth Amendment jurisprudence in appellate court opinions. These writing and research-intensive experiences will allow for me to succeed as a judicial clerk.

Thank you for your consideration. I am very interested in speaking with you further regarding my abilities and qualifications for the clerkship. I look forward to hearing from you.

Respectfully,

/s/ Ciera Killen
Ciera Killen

Ciera Killen

9654 14th View Street | Norfolk, Virginia 23503 | (540) 560-5884 | ckillen@wm.edu

EDUCATION

William & Mary Law School, Williamsburg, Virginia
J.D expected, May 2024
GPA: 3.5; Class Rank: Top 25%
Honors: ***William & Mary Bill of Rights Journal***, Managing Editor (2023-24), Associate Editor (2022-23)
Phi Delta Phi (International Legal Honors Society)

College of William & Mary, Williamsburg, Virginia
B.A., Public Policy, May 2018
GPA: 3.32
Honors: Dean's List, Spring 2017
Activities: Debate Society, Vice President of Operations

EXPERIENCE

Federal Bureau of Investigation, Norfolk, Virginia
Incoming Intern June 2023 to August 2023
Expected duties include: Analyzing Fourth Amendment law to draft search warrants and advising law enforcement agents on the scope of their constitutional and statutory authority.

Dean A. Benjamin Spencer, William & Mary Law School, Williamsburg, Virginia
Research Assistant June 2022 to present
Assisted with updates to Wright & Miller's Federal Practice & Procedure treatise by performing research to determine how courts have applied various federal rules of civil procedure and synthesizing whether application of these rules was novel or a continuation of the application by other courts.. Synthesized how courts' application of civil procedure was novel or a continuation of other courts' understanding.

The Hon. Lawrence R. Leonard, U.S. District Court, Eastern District of Virginia, Norfolk, Virginia
Judicial Intern June to August 2022
Drafted four bench memoranda on procedural and substantive issues, including FRCP Rule 26(g) and the standard for summary judgment for judicial estoppel. Researched a court's authority to destroy evidence and drafted order halting destruction of evidence. Drafted memorandum analyzing whether magistrate judges have authority to expunge arrest records where there was no finding of guilt. Submitted four reports and recommendations for § 2254 habeas petitions. Cite-checked two reports and recommendations.

Virginia Organizing, Newport News, Virginia
Community Organizer June 2018 to June 2021
Started the Newport News Chapter of Virginia Organizing with local volunteers. Organized over 25 volunteers to work on a local campaign to improve transportation in Newport News. Succeeded in decreasing wait time along popular bus routes from 45 minutes to 15 minutes.

AidData, Williamsburg, Virginia
Senior Research Assistant on Tracking Underreported Financial Flows August 2015 to May 2018
Trained over 30 researchers on the TUFF methodology. Managed workflows of at least eight junior researchers each semester. Edited and verified collected data before publishing on National Public Radio.

COMMUNITY SERVICE

Martial Arts Coach, Five Crow Martial Arts, Hampton, Virginia Fall 2018 to present

Interests include watching Boston Celtics basketball and reading contemporary novels.

WILLIAM & MARY LAW SCHOOL
OFFICE OF CAREER SERVICES

Unofficial Transcript

Note to Employers from the Office of Career Services regarding Grade Point Averages and Class Ranks:

- Transcripts report student GPAs to the nearest hundredth. **Official GPAs are rounded to the nearest tenth and class ranks are based on GPAs rounded to the nearest tenth.** We encourage employers to use official Law School GPAs rounded to the nearest tenth when evaluating grades.
- Students are ranked initially at the conclusion of one full year of legal study. Thereafter, they are ranked only at the conclusion of the fall and spring terms. William & Mary does not have pre-determined GPA cutoffs that correspond to specific ranks.
- Ranks can vary by semester and class, depending on a variety of factors including the distribution of grades within the curve established by the Law School. Students holding a GPA of 3.6 or higher will receive a numerical rank. All ranks of 3.5 and lower will be reflected as a percentage. The majority of the class will receive a percentage rather than individual class rank. In either case, it is likely that multiple students will share the same rank. Students with a numerical rank who share the same rank with other students are notified that they share this rank. Historically, students with a rounded cumulative GPA of 3.5 and above have usually received a percentage calculation that falls in the top 1/3 of a class.
- Please also note that transcripts may not look the same from student-to-student; some individuals may have used this Law School template to provide their grades, while others may have used a version from the College's online system.

Transcript Data

STUDENT INFORMATION

Name : Ciera Killen

Curriculum Information

Current Program

Juris Doctor

College: School of Law

Major and Department: Law, Law

***Transcript type:WEB is NOT Official ***

DEGREES AWARDED

Sought: Juris Doctor **Degree Date:**

Curriculum Information

Primary Degree

College: School of Law

Major: Law

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Institution:	17.000	17.000	17.000	16.000	53.40	3.33

INSTITUTION CREDIT -Top-

Term: Fall 2021

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	101	LW	Criminal Law	A-	4.000	14.80	
LAW	102	LW	Civil Procedure	A	4.000	16.00	
LAW	107	LW	Torts	B+	4.000	13.20	
LAW	130	LW	Legal Research & Writing I	B+	2.000	6.60	
LAW	131	LW	Lawyering Skills I	H	1.000	0.00	

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	15.000	15.000	15.000	14.000	50.60	3.61
Cumulative:	15.000	15.000	15.000	14.000	50.60	3.61

Unofficial Transcript

Term: Spring 2022

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	108	LW	Property	A-	4.000	14.80	
LAW	109	LW	Constitutional Law	B+	4.000	13.20	
LAW	110	LW	Contracts	B+	4.000	13.20	
LAW	132	LW	Legal Research & Writing II	A-	2.000	7.40	
LAW	133	LW	Lawyering Skills II	H	2.000	0.00	

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA

Current Term:	16.000	16.000	16.000	14.000	48.60	3.47	
Cumulative:	31.000	31.000	31.000	28.000	99.20	3.54	

Unofficial Transcript

Term: Fall 2022

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	140A	LW	Adv Writing&Practice:Appellate	A-	2.000	7.40	
LAW	342	LW	Life or Death	H	1.000	0.00	
LAW	348	LW	Privacy Law	B+	3.000	9.90	
LAW	401	LW	Crim Proc I (Investigation)	A-	3.000	11.10	
LAW	402	LW	Crim Pro II (Adjudication)	A-	3.000	11.10	
LAW	761	LW	W&M Bill of Rights Journal	P	1.000	0.00	

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	13.000	13.000	13.000	11.000	39.50	3.59
Cumulative:	44.000	44.000	44.000	39.000	138.70	3.55

Unofficial Transcript

Term: Spring 2023

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	115	LW	Professional Responsibility	B+	2.000	6.60	
LAW	309	LW	Evidence	A-	3.000	11.10	
LAW	412	LW	Legis/Statutory Interpretation	A-	3.000	11.10	
LAW	477	LW	Section 1983 Litigation	B-	3.000	8.10	
LAW	531	LW	Sel Topics in Crim Justice Sem	B+	2.000	6.60	
LAW	542	LW	American Jury Seminar	B+	3.000	9.90	
LAW	761	LW	W&M Bill of Rights Journal	P	1.000	0.00	

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	17.000	17.000	17.000	16.000	53.40	3.33
Cumulative:	61.000	61.000	61.000	55.000	192.10	3.49

Unofficial Transcript

TRANSCRIPT TOTALS (LAW - FIRST PROFESSIONAL) -Top-

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Total Institution:	61.000	61.000	61.000	55.000	192.10	3.49
Total Transfer:	0.000	0.000	0.000	0.000	0.00	0.00
Overall:	61.000	61.000	61.000	55.000	192.10	3.49

Unofficial Transcript

COURSES IN PROGRESS -Top-

Term: Fall 2023

Subject	Course	Level	Title	Credit Hours
LAW	400	LW	First Amend-Free Speech & Pres	3.000
LAW	452	LW	Employment Discrimination	3.000
LAW	619	LW	Supreme Court Seminar	1.000
LAW	761	LW	W&M Bill of Rights Journal	3.000

A. Benjamin Spencer
Dean and Chancellor Professor of Law

William & Mary Law School
Post Office Box 8795
Williamsburg, VA 23187-8795

Phone: 757-221-3790
Fax: 757-221-3261
Email: spencer@wm.edu

June 08, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to recommend that you hire Ciera Killen as a clerk in your chambers. Ciera is a member of the Class of 2024 at William & Mary Law School who already has quite an accomplished record of success. She was able to complete a successful tenure as a Judicial Intern for a federal magistrate judge, is in the top 25% of her class, and is a staff member of the *William & Mary Bill of Rights Journal*.

Additionally, Ciera has been serving as my research assistant, a role in which she has added tremendous value. The work has consisted of supporting my updates to multiple volumes of the Wright & Miller Federal Practice & Procedure treatise. She was amazing in her ability to research and identify relevant material for inclusion in the treatise. Because of her diligent and thorough work on the treatise, it will be a better product for the thousands of judges and practitioners who rely on the analysis and updates the treatise provides.

I have every confidence that Ciera would be a tremendous asset to your work. I strongly encourage you to hire her.

Best regards,

/s/

A. Benjamin Spencer
Dean and Chancellor Professor of Law

United States District Court
EASTERN DISTRICT OF VIRGINIA
WALTER E. HOFFMAN UNITED STATES COURTHOUSE
600 GRANBY STREET
NORFOLK, VIRGINIA 23510-1915

(757) 222-7020

FACSIMILE NO.
(757) 222-7028

CHAMBERS OF
LAWRENCE R. LEONARD
UNITED STATES MAGISTRATE JUDGE

January 24, 2023

To whom it may concern,

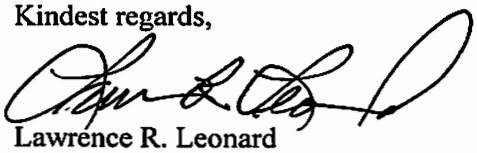
Ciera Killen has advised that she is applying for a position with your organization, and asked me to write her a letter of recommendation. I am glad to give you my thoughts, based on our experience with her as a William & Mary 1L summer intern. As you will note from her resume, Ciera came to my internship with an impressive and diverse background, starting with her excellent work as an undergraduate at the College of William & Mary, including her internship with USAID and work with AidData and the National Endowment for Democracy, and then the three years she spent as a community organizer with Virginia Organizing. One thing I look for in law clerks and interns is some "real world" experience apart from schooling, and Ciera's background certainly provided her with that valuable background. But, rather than elaborate on these accomplishments, since you can see them for yourself, I'd like to address two things about Ciera that cannot be reflected on a resume and are based on my experience with having her in chambers.

First, although Ciera had only completed her first year of law school, she was a very quick study who eagerly and perceptively embraced her research and writing assignments. During her summer here, Ciera spent considerable time researching and writing excellent bench memoranda for me on a variety of topics as diverse as the parameters of the authority of a federal court to order the forfeiture and destruction of contraband, circumstances under which a federal court can grant expungement of criminal arrest records, and the meaning of an attorney's duty to make "reasonable inquiry" into the factual basis of discovery responses under Federal Rule of Civil Procedure 26(g). In addition, she made valuable contributions to several reports and recommendations in cases involving habeas corpus petitions and a social security appeal. She embraced the editorial process, was enthusiastic in all her assignments, and did not hesitate to ask questions to avoid going down the wrong path (something many law students are afraid to do), all of which should put her in good stead in your organization.

Second, as a person Ciera was a delight to have in chambers. As you know, in a small working environment such as a judicial chambers it is vitally important that there be a productive and amiable relationship among judge, law clerks and judicial assistant. Ciera fit right into our chambers with a positive and engaging demeanor. Always cordial and respectful, Ciera was a cheerful addition to our chambers during her summer internship.

I believe Ciera would make a fine addition to your organization, and I recommend her highly. Please contact me if I can be of any further assistance.

Kindest regards,



Lawrence R. Leonard
United States Magistrate Judge

Jeffrey Bellin
Cabell Research Professor and
Mills E. Godwin, Jr., Professor of Law

William & Mary Law School
P.O. Box 8795
Williamsburg, VA 23187-8795

Phone: 757-221-7364
Email: jbellin@wm.edu

June 08, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am pleased to submit this recommendation on behalf of Ciera Killen. Ciera was a student in my Fall 2022 Criminal Procedure: Investigations course where she performed extremely well. While Criminal Procedure is a large lecture class, Ciera stood out. She was fully engaged with the material, always prepared, and regularly engaged in class discussions. Since Ciera had clearly prepared well for the class, and is a thoughtful and smart student, all of her questions and comments were constructive and she was a true asset to the course.

As a former prosecutor, I structure my course around the types of legal analysis and questions that arise most frequently in the courts. Consequently, Ciera's thorough engagement in the course and her excellent performance on the exam indicate that she will be an asset in a judicial environment. The course typically attracts strong students and is graded on a curve that strictly limits high grades. Consequently, Ciera's grade (A-) indicates that she was well prepared and learned the material at a high level.

Finally, as someone who has served as a clerk in both federal and state court, I am aware of how important intangible factors can be to the efficient workings of judicial chambers. From my interactions with Ciera at office hours and in class, I expect that Ciera will be an excellent clerk. She is intellectually curious, hardworking, and exhibits good judgment. At the same time, she is a serious student who will intuitively understand the importance of judicial work while, on a personal level, she seems easy going, and is a pleasure to be around. Given the combination of these attributes with her legal acumen, I am confident that Cierra will be an outstanding judicial clerk. Should you have any questions about her candidacy, please contact me at: jbellin@wm.edu or (757) 221-7364.

Sincerely,

/s/

Jeffrey Bellin
Professor of Law

BENCH MEMORANDUM

To: Judge Leonard
From: Ciera Killen
Date: June 24, 2022
Re: Motion for Summary Judgment filed in *Plaintiff v. Defendant 2,* No. 2:21-cv-XXX

Judge,

Below is a memorandum summarizing the motion for summary judgment filed in *Plaintiff v. Defendant 1 Insurance Co*.

Defendant, Defendant 1 Insurance Company ("Defendant 1") carried Plaintiff's homeowner's insurance policy. Prior to the present case, Plaintiff filed for Chapter 7 Bankruptcy. Defendant 1 contends Plaintiff should be judicially estopped from pursuing breach of contract litigation against them because of the litigation initiated by the Plaintiff concerning his bankruptcy. Defendant 2 LLC ("Defendant 2s") defaulted in this case on November 5, 2021.

Executive Summary

Judicial estoppel is a three-prong test that requires every element to be met. Those elements include: (1) did a Plaintiff adopt a factual position inconsistent with a stance taken during litigation (2) was that position accepted by the court (3) did the Plaintiff intentionally mislead the court to gain an unfair advantage.

It is likely Plaintiff adopted a factually inconsistent position because he valued his personal and household goods at $3,610 in his bankruptcy petition and $300,000 when he filed an insurance claim with Defendant 1. The sheer magnitude of that disparity in value likely satisfies the Fourth Circuit's standard that the positions between litigation must be "diametrically opposed." His initial factual position was probably accepted by the Bankruptcy Court when it discharged his bankruptcy even though he later consented to the revocation of that discharge since the court never made a ruling changing its disposition. Plaintiff likely acted to mislead the court either intentionally or

recklessly by the consistent disregard for the instructions set out in the bankruptcy petition. Such acts suggest that Plaintiff was looking to gain an unfair advantage by preserving valuable personal property while also attempting to have his debt discharged.

Defendant's Motion for Summary Judgment

I. Summary of Arguments

a. Defendant's Memorandum in Support

Defendant 1 moved for summary judgment, arguing that Plaintiff ("Plaintiff") should be judicially estopped from pursuing multiple breach of contract claims. ECF No. 28 at 1-5.

On August 31, 2019, Plaintiff filed for bankruptcy. ECF No. 28, attach. 1 at 1. That same day he hired movers, Defendant 2 to move to his new home in Washington. ECF No. 28, attach. 6 at 3. According to Plaintiff, Defendant 2 delivered only half of his goods and what was returned was damaged. *Id.* at 7. Plaintiff had filed an insurance claim with his homeowner's insurance, Defendant 1, when Defendant 2s refused to deliver his belongings. *Id.* at 6. Defendant 1 paid Plaintiff $48,000 and denied paying out the full value of his insurance claim which was $204,500. ECF No. 28, attach 6 at 7; ECF No. 28 at 2.

On December 16, 2019, Plaintiff's bankruptcy was discharged. ECF No. 23 at 1. On November 25, 2020, a bankruptcy trustee learned of Plaintiff's insurance claim and filed a complaint against Plaintiff. The trustee alleged that he "knowingly and fraudulently failed to disclose of all his assets [in his bankruptcy proceeding." ECF No. 28, attach. 4 at 7.

In his bankruptcy forms Plaintiff reported to have $1,590 in "household goods and furnishings." ECF No. 28, attach. 1 at 6. In his loss inventory for insurance he claimed more than $20,000 of furniture. ECF No. 28, attach. 4 at 12.

In his bankruptcy form he listed he had no electronics. ECF No. 28, attach. 1 at 11. In his loss inventory he claimed he had $27,850 worth of electronics. ECF No. 28, attach. 4 at 13-14.

In his bankruptcy form he listed he had no collector items, and the only assets he claimed to have was $4,072.94 which was money from his bank accounts and tax returns. ECF No. 28, attach. 1 at 12-14. In his deposition he claimed he had over 300 pairs of shoes, and they were assets worth over $100,000. ECF No. 28, attach. 6 at 5. In his inventory loss he claimed he lost 200 pairs of sneakers worth $250 a piece. ECF No. 28, attach. 4 at 14.

In his bankruptcy form he claimed he had two guns worth $600, and they qualified as exempted goods under Virginia law. ECF No. 28, attach. 1 at 17. In his loss inventory he valued those same two guns at $1,000 and listed he had two additional firearms worth $1,900 and a total of $5,000 in ammunition. ECF No. 28, attach. 4 at 14.

In his bankruptcy form, Plaintiff claimed the only sports and exercise equipment he owned were valued at $300. ECF No. 28, attach. 1 at 11. In his inventory loss sheet, he claimed he had a Rogue RM4 Monster Rack 2.0, a Rogue EZ Bar, and a ProForm Smart Pro9000 Treadmill. He valued those items at $5,950. ECF No. 28, attach. 4 at 13.

In his bankruptcy form he claimed he had $1,000 in clothing. ECF No. 28, attach. at 17. In his loss inventory he claimed his clothing and accessories were valued at over $22,400. ECF No. 28, attach. 4 at 13.

In his bankruptcy form, he disclosed having one piece of jewelry which was a silver necklace valued at $120. ECF No. 28, attach. at 17. In his loss inventory he claimed he had five watches worth $2,000 and the same silver necklace was valued at $1,000. ECF No. 28, attach. 4 at. 12.

Plaintiff also failed to disclose the homeowner's insurance claim on October 10, 2019, when he had a meeting with creditors concerning his bankruptcy petition. *Id.* at 6.

On August 27, 2021, Plaintiff consented to the revocation of his bankruptcy discharge. ECF No. 28, attach. 5 at 1.

During a deposition, Plaintiff explained that the discrepancy between his bankruptcy forms and his home insurance claim was because his lawyer during his bankruptcy filing instructed him not to list items that his two dependent daughters used like the couch or the tv. ECF No. 28, attach. 6 at 4. When Plaintiff was asked why he did not disclose additional items that were not used by his daughters, like the 300 pair of sneakers, he said they were like assets. He also said that he meant to leave to his daughters "and everything you list in assets for the bankruptcy is for consideration for repayment." *Id.* at 5.

Defendant 1 contends that Plaintiff had an affirmative duty to "disclose all of his personal and household goods in his bankruptcy schedules, regardless of occasional use by his daughters." ECF No. 28 at 7. They contend that "the Bankruptcy Code and Rules 'impose upon the bankruptcy debtors an express, affirmative duty to disclose all assets, including contingent and unlocated claims." *Id.* at 6 (*quoting In re Coastal Plains, Inc.*, 179 F.3d 201, 207-08 (5th Cir. 1999)). Defendant 1 further argues that Plaintiff perjured himself when he claimed that his recordings in his bankruptcy filings were true to the best of his knowledge. *Id.* at 7.

Defendant 1 disputes the allegation that Plaintiff's filing discrepancy was because of advice from legal counsel. ECF No. 28 at 8. First, they are skeptical Plaintiff ever received such legal advice. *Id.* Second, they argue that advice from legal counsel is not absolution from lying on bankruptcy forms. *Id.* They cite the language in the bankruptcy schedules that warn against

committing fraud. *Id.* at 7. Defendant 1 alleges Plaintiff admitted that he did not disclose all his assets because he knew that they can get confiscated to pay down debts. *Id.* at 8.

Defendant 1 argues that by failing "to amend his bankruptcy schedules to include his property damage claim to Defendant 1" Plaintiff was actively concealing information in order to maintain his bankruptcy petition. *Id.*

Defendant 1 argues that judicial estoppel is proper in this case because Plaintiff's stances in the bankruptcy filings and his inventory loss claim are inconsistent; that he knew of the omissions; and he intended to shield valuable property from bankruptcy proceedings. *Id.* at 9.

b. Plaintiff's Memorandum in Opposition

Plaintiff disputes the motion for summary judgment, claiming it is inappropriate at this point because there are still genuine issues of material fact. ECF No. 30 at 1. When reviewing a motion for summary judgment, the Court ought view the evidence in the light most favorable to the non-moving party. *Id.* at 2.

Plaintiff contends that Defendant 1 has offered no evidence suggesting he did not receive and rely on the advice of his legal counsel when he filed his bankruptcy forms. *Id.* Plaintiff argues that Defendant 1's only evidence that his reliance on counsel's advice was unreasonably was "certain pre-printed" instructions on the bankruptcy schedule. *Id.*

He also argues that part of the discrepancy in the value of his goods arises from how he was instructed to estimate the value his goods on the bankruptcy forms versus the insurance forms. *Id.* He says based on the advice of legal counsel he listed the items in his possession at their "current"[1] on the bankruptcy petition, while he listed the items on the insurance policy at their "replacement value." *Id.* at 2-3.

[1] Plaintiff also uses the term "yard sale", interchangeably with "cash value", the former is the value as in what does Plaintiff think he could get these items for at a yard sale. ECF No. 28, attach. 6 at 15.

Plaintiff insists that "good faith 'reliance on counsel generally absolves a debtor of fraudulent intent.'" *Id.* at 3 (*citing Van Robinson v. Worley*, 849 F. 3d 581, 586 (4th Cir. 2017). He cited his deposition as evidence that he listened to counsel. ECF No. 30 at 3. Plaintiff argues that because there is a dispute over whether such reliance was done in good faith there is still a genuine issue of material fact, so granting Defendant 1's motion would be improper. *Id.*

Furthermore, Plaintiff argues Defendant 1 did not meet its burden to satisfy judicial estoppel. *Id.* First, he argues his positions in the different litigation were not inconsistent because for the listed goods he followed the instructions of each form and used the "current value" to estimate the worth of his goods and in the other he used "replacement value." *Id.* at 4. He claims any omission of items based on advice from counsel should not be settled on a summary judgment motion. *Id.*

Second, Plaintiff claims that it would not matter even if his positions were inconsistent. He argues that his bankruptcy position was "not accepted by the court" since he consented to the revocation of his discharge. *Id.* Plaintiff submitted that his reason for consenting to the revocation because he was able to satisfy his creditors after selling his home in Virginia. *Id.*

Lastly, Plaintiff argues that Defendant 1 has failed to show how he intentionally mislead the bankruptcy court to gain an "unfair advantage." *Id.*

c. Defendant's Reply to Plaintiff's Opposition

Defendant 1 states that summary judgment is appropriate because there is evidence in the record that shows Plaintiff made statements under oath and that he knowingly failed to list all of his assets on his bankruptcy petition. ECF No. 31 at 1. Defendant 1 argues that those omissions caused his bankruptcy to be revoked. *Id.*

They also argue that even if Plaintiff's counsel did give him incorrect legal advice, that advice is "no defense when it should have been obvious to the debtor his attorney was mistaken." *Id.* at 3 (*citing Robinson*, 849 F.3d at 586). Defendant 1 argues that Plaintiff admitted to omitting valuable assets like "$100,000 worth of Jordan basketball shoes, a Breitling watch, televisions, laptop, guns, ammunition." ECF No. 31 at 3.

They point out that the language in the bankruptcy schedules explicitly state that "making a false statement, concealing property . . . in connection with a bankruptcy case can result in fines up to $250,000, or imprisonment for up to 20 years, or both." *Id.* at 4. Defendant 1 argues that such language made Plaintiff's reliance on counsel unreasonable. *Id.* at 5. Furthermore, Defendant 1 argues that Plaintiff was actively trying to hide assets, not making an innocent mistake based on questionable legal advice. *Id.* They point to Plaintiff's deposition where he said, "I have over $100,00 in sneakers . . . so its an asset . . . those, again, are something I plan on passing down to my daughters. . . . I didn't want to disclose that. I can't say I have $100,000 worth of sneakers on a bankruptcy petition; okay?" *Id.*

Defendant 1 then argues that Plaintiff's initial position was twice accepted by the court. First when his bankruptcy was discharged because that decision by the court was based on Plaintiff's omissions. *Id.* at 6. Second, the bankruptcy court accepted his position when the bankruptcy trustee filed the complaint alleging he "knowingly and fraudulently failed to disclose of all his assets [in his bankruptcy proceeding]" even though Plaintiff consented to the revocation of his bankruptcy. *Id.*

Finally, Defendant 1 argues that Plaintiff did intentionally mislead the courts in order to "gain an 'unfair advantage.'" *Id.* at 7. They claim he intentionally did not disclose assets, like the sneakers, in order to protect them for his daughters. *Id.*

II. Analysis

a. When is Judicial Estoppel Warranted?

The Fourth Circuit has a three-prong test to determine when judicial estoppel is appropriate: (1) did a party adopt a factual position inconsistent with a stance taken during litigation (2) was that position accepted by the court (3) did the party intentionally mislead the court to gain an unfair advantage. *Lowery v. Stovall*, 92 F.3d 220, 224 (4th Cir. 1996). Intentionally misleading the courts is the determinative factor that must be decided when considering judicial estoppel. *Id.* The Fourth Circuit Court of Appeals has held that "it is inappropriate . . . to apply the doctrine [of judicial estoppel] when a party's prior position was based on an inadvertence or mistake." *Id.* (*citing John S. Clark Co. v. Faggert & Frieden, P.C.*, 65 F.3d 27, 29 (4th Cir. 1995).

b. Did Plaintiff Adopt a Factual Position that is Inconsistent with a Stance Taken in the Bankruptcy Litigation?

Plaintiff likely adopted an inconsistent factual position regarding the value of his personal household goods in his bankruptcy petition and the complaint against his homeowner's insurance today.

A party can only be judicially estopped when they are "seeking to adopt a position that is inconsistent with a stance taken in prior litigation. And the position sought to be estopped must be one of fact rather than law or legal theory." *Lowery*, 92 F.3d at 224. When determining what amounts to a factual question versus a legal question, a "question of fact is one that can be answered with little or no reference to the law." *Mullinex v. Crane Inc.*, 2021 WL 8533035, at *7 (E.D. Va. Oct. 5, 2021).

In *Lowery*, the plaintiff sued two police officers for violating his constitutional rights during a traffic stop where the plaintiff ended up being shot by one of the officers. 92 F.3d at 220-21. The district court and the court of appeals both denied the officers' motion for summary judgement. *Id.* at 221. During this time the plaintiff pled guilty to a "related criminal action." *Id.* After the plaintiff pled guilty the district court reviewed the case on remand and granted summary judgement in favor of the officers. *Id.* The court of appeals held that the plaintiff was judicially estopped because he adopted legal positions that were "diametrically opposed to each other" when he admitted to cutting the officer's face in the guilty plea hearing while on appeal he claimed he did not attack the officer. *Id.* at 224.

In *Mullinex*, the plaintiff alleged they were entitled to recovery because defendants failed to put a warning on its products. 2021 WL 8533035, at *1. The court found that that there is a question of fact when a question that can be answered without any consideration of the relevant law. *Id.* at *7.

The sheer chasm between $3,610 and $300,000 cannot simply written off to a difference in calculation of value as alleged by Plaintiff. Such omissions and discrepancies occurred allegedly on the advice of counsel. He said his lawyer told him not to disclose items he shared with his daughters and then when assessing the value of any other item he owned, he should "figure out what it would go for at a yard sale. No matter what the value is, what are people really pay at a yard sale[?]" ECF No. 28, attach 6 at 4. Whether or not Plaintiff's reliance on such advice is a defense to judicial estoppel will not be discussed here. That legal issue will be in section D.

However, there is an outstanding concern that Plaintiff failed to disclose items he used exclusively. For example, nothing in Plaintiff's statements explains why he did not list all of the

firearms or all of his exercise equipment when he listed some. *See generally* ECF No. 28, attach 6.

When comparing the bankruptcy petition and the insurance inventory loss sheet, there is evidence that Plaintiff estimated different values of items on both lists. *See* ECF No. 28, attach. 1 at 17; ECF No. 28, attach. 4 at 14. The combined value for the Springfield Armory 40xd pistol and Glock 43 pistol is $600 on the bankruptcy petition. ECF No. 28, attach. 1 at 17. On the inventory filing, both guns are valued at $1,000 total. ECF No. 28, attach. 4 at 14.

That discrepancy may be written off to the alleged difference between "current value" and "replacement value" if not for Plaintiff's complete failure to list two other firearms valued at $1,900 and $5,000 in ammunition. *Id.* According to his own statements on the inventory loss sheet, Plaintiff owned all the items at the time of filing his bankruptcy petition.[2] *Id.*

This was not the only omission. Plaintiff claimed the only sports and exercise equipment he owned included two softball bats, Nicklaus starter golf clubs, and Bow Flex adjustable dumbbells. ECF No. 28, attach. 1 at 11. He valued those items at $300 on his bankruptcy petition. *Id.* In his inventory loss sheet, Plaintiff claimed he had a Rogue RM4 Monster Rack 2.0, a Rogue EZ Bar, TRX bands, and a ProForm Smart Pro9000 Treadmill. He valued those items at $6,425. ECF No. 28, attach. 4 at 13.

Based on the aforementioned omissions, there is sufficient evidence to find that the positions adopted by Plaintiff in the bankruptcy litigation and the insurance litigation were "diametrically opposed to each other." *See Lowery*, 92 F.3d at 224. Without examining issues of value calculation or potentially bad legal advice, it is obvious from the record that Plaintiff did disclose some items on his bankruptcy petition while neglecting to disclose like items of

[2] Plaintiff had a Mossburg AR-15 for two years and a Desert Eagle .45 for eleven years. ECF No. 28, attach. 4 at 14.

substantial value. Those specific omissions alone are over $13,000. *See generally* ECF No. 28, attach 4. This Court finds that gap in disclosure is significant enough to find that Plaintiff adopted inconsistent stances between litigation. The question of what was and was not omitted is a factual one that does not require any consideration as a matter of law. *See Mullinex*, 2021 WL 8533035, at *7.

c. If Plaintiff Did Adopt an Inconsistent, Was that Position Accepted by the Court?

The Bankruptcy Court likely accepted Plaintiff's position when it used his representations as the basis for discharging his bankruptcy.

The Fourth Circuit has held that "judicial acceptance means only that the first court has adopted the position urged by the party . . . as part of a final disposition. [Furthermore] judicial estoppel does not apply to the settlement of an ordinary civil suit because 'there is no "judicial acceptance" of anyone's position.'" *Lowery*, 92 F.3d at 224-25. Lower courts in the Fourth Circuit have extended this to mean that a court accepts a party's position when it rules on a motion while relying on the facts presented by the party. *See Mullinex*, 2021 WL 8533035, at *8.

In *Lowery*, the plaintiff entered into a plea of guilty and the Fourth Circuit Court of Appeals found that because such pleas require the court to determine if they are given "voluntarily with an understanding of the nature of the charge and consequences of the plea" that a guilty plea qualifies as acceptance by the court. 92 F.3d at 225. It seemed to matter to the court that on multiple occasions through the guilty plea hearings, the court asked the plaintiff if the facts alleged in the assertions were true and the plaintiff kept agreeing they were. *See id.*

In *Mullinex* the government contractors representations were "accepted by the court" because the court had used the contractor's position as the factual basis for a motion for remand and a motion for sanctions. 2021, WL 8533035, at *8.

The Bankruptcy Court accepted Plaintiff's initial position when it discharged his debt on December 16, 2019. ECF No. 28, attach. 4 at 2. Plaintiff submitted his notice of revocation of discharge on August 25, 2021. ECF No. 28, attach. 5 at 2. On August 31, 2021, he initiated this action against Defendant 1. ECF No. 1. He is arguing that since he consented to the revocation his discharge, there was no final disposition of bankruptcy, so there was no court acceptance of his initial position. ECF No. 30 at 4.

This case is distinct from *Lowery* where the Fourth Circuit detailed that in a civil settlement there would not be judicial acceptance because there was no final disposition taken by the court. *See* 92 F.3d at 225. Here, there was a final disposition initially. ECF No. 28 at 4 at 2. The case was then reopened, and Plaintiff revoked the discharge eighteen months later. ECF No. 28, attach. 4 at 2; ECF No. 28, attach. 5 at 2.

The Court of Appeals explicitly states that judicial estoppel is inappropriate in the "settlement of an *ordinary* civil suit" where no final disposition has been taken by the court. *Lowery*, 92 F.3d at 225 (emphasis added). This situation is not ordinary for a civil suit. The Bankruptcy Court's discharge relied on Plaintiff's position that he only had $3,610 in personal household goods. *See* ECF No. 28, attach. 1 at 15. That final disposition did not change simply because Plaintiff consented to the revocation of bankruptcy. Yes, the Bankruptcy Court granted a motion to reopen the case, but that did not negate the initial findings because there was no new ruling on the merits of initial bankruptcy petition from that court or a higher court. *See generally* ECF No. 28, attach. 5.

Alternatively, this Court can find that because the Bankruptcy Court relied on Plaintiff's position that he only had $3,610 in personal household goods to grant the motion to reopen the

case on November 25, 2020. *See id*; ECF No. 28, attach 1 at 15. This situation is similar to *Mullinex* where the court found it had accepted the defendants' position because it had used their representations for the basis of a motion. *See* 2021 WL 8533035 at *8.

There is a difference between this case and *Mullinex* where it was the defendants who had made the motion. *See id.* There is an argument that the complaint to reopen the bankruptcy case was initiated by the Bankruptcy Trustee; therefore, Plaintiff did not "urge" the court to accept his position. The flaw in that argument is that Plaintiff did "urge" the court to accept that he only had $3,610 in personal household goods when he filed for bankruptcy. *See* ECF No. 28, attach. 1 at 15. It should not matter which party made the motion because the court should be able to presume that parties are urging the court to adopt the positions they have argued.

Therefore, the Bankruptcy Court likely did accept Plaintiff's initial position because it used his position as the basis for discharging bankruptcy and it also accepted his initial position as a basis for a motion to reopen the initial bankruptcy case.

d. Did Plaintiff Intentionally Mislead the Court for His Own Gain?

Plaintiff likely intentionally tried to mislead the Bankruptcy Court for his own gain when he failed to disclose items on his item.

A "determinative factor" of judicial estoppel is did "'the party who is alleged to be stopped intentionally [mislead] the court to gain unfair advantage,' and not when a 'a party's prior position was based on inadvertence or mistake." *Lowery*, 92 F.3d at 224 (*citing Faggert & Frieden, P.C.*, 65 F.3d at 29). Courts in the Fourth Circuit should not presume bad faith, and any investigation of a party's intent should be fact intensive and case specific. *Martineau v. Wier*, 934 F.3d 387, 394 (4th Cir. 2019). A debtor cannot claim that he was led astray by poor legal advice when it "should have been obvious" to him that his counsel was incorrect. *Robinson*, 849 F.3d at 586.

In *Faggert & Frieden, P.C.* the Court of Appeals for the Fourth Circuit remanded the case for trial because it was not clear Clark intentionally misled the law firm of Faggert & Frieden when Clark asked the law firm to file a mechanic's lien to during a business venture. 65 F.3d at 29. The court found judicial estoppel was inappropriate grounds to dismiss the action if a "party's prior position was based on inadvertence or mistake." *Id.*

The Fourth Circuit Court of Appeals held that "intentionally misleading the court" should be determined by "each cases's 'specific facts and circumstances.'" *Martineau*, 934 F.3d at 394. In *Martineau*, the plaintiff argued that the district court "improperly applied a presumption of bad faith" because at the time she filed bankruptcy she did not disclose that she was considering litigation against the defendants. *Id.* at 390. The plaintiff had thought she was barred from litigation as a matter of law since she had signed a settlement agreement with the defendants prior to filing bankruptcy. *Id.* at 389. The court explicitly rejects the Fifth Circuit's good faith standard set out in *In re Coastal Plains* where a debtor's failure to disclose is excused "only when . . . the debtor either lacks knowledge of the undisclosed claims or has no motive for their concealment." *Id.* at 389-94. Instead, the Fourth Circuit held that there should not a presumption of bad faith. *Id.* at 395. It remanded the case to the district court to consider all the facts to determine if the plaintiff "intentionally misled the court to gain an unfair advantage." *Id.* at 396.

"Reckless indifference to the truth constitutes the functional equivalent of fraud." *Robinson*, 849 F.3d at 585 (*citing In re Arnold*, 369 F.R. 266, 272 (Bankr. W.D. Va. 2007). In *Robinson*, the court considered the plaintiff's work experience as a financial professional relevant for determining whether his failure to assess the value of his property was merely a mistake. *Id.* at 586. The court found when the plaintiff attempted to claim that he relied on advice from his lawyer as a reason for why he did not accurately list the valuation of his property, that "while

reliance on counsel generally absolves a debtor of fraudulent intent . . . [it] is no defense when it should have been obvious to the debtor that his attorney was mistaken." *Id.* at 586.

In *Calafiore v. Werner Enterprises, Inc.* the U.S. District Court of Maryland held that even when a plaintiff knew of an undisclosed claim in a bankruptcy petition, if he "lacked the necessary motive to conceal his claim . . . he [would] not be judicially estopped from seeking those kinds of damages." 418 F. Supp. 2d 796, 799 (D. Md. 2006). In that case the plaintiff had been involved in a car accident and had filed an insurance claim. *Id.* at 796. While the insurance claim was ongoing the plaintiff filed for bankruptcy. *Id.* Plaintiff failed to include the ongoing claim in his bankruptcy petition. *Id.* at 799. Plaintiff argued that "he acted inadvertently in omitting [the claim] on his petition. He contends that because any compensatory damages from this case would be shielded from his creditors under Maryland law, he lacked a motive to conceal that claim, and should accordingly not be estopped from bringing a new claim." *Id.* The court ultimately allowed the plaintiff to seek some damages but not all related to the accident. *Id.* at 802.

For the purpose of reviewing the issue as a matter for summary judgment, the Court will assume Plaintiff did received the legal advice he alleges. Even when assuming Plaintiff did receive poor legal counsel, there is still sufficient evidence that he either knew or should have known the advice he received was incorrect or at least unreliable. First, he admitted to expressing skepticism of his counsel's advice during his deposition. *See* ECF No. 28, attach. 6 at 4. When discussing why he did not disclose the full extent of his debts he said "I was worried [the petition] wasn't disclosing accurate information as far as the amount owed. [His lawyer] said it doesn't matter, any uncured debt gets wiped away if they approve the Chapter 7." *Id.* This statement indicates some level of concern about his lawyer's advice. *Id.* Second, he showed a reckless disregard for the truth which can amount to fraud. Like in the plaintiff in *Robinson*, Plaintiff had work experience

in finance. ECF No. 28, attach. 6 at 2; *See* 849 F.3d at 586. In his deposition he said he was in finance prior to 2010. ECF No. 28, attach. 6 at 2. It also seems that while in Virginia he was the finance director of a car dealership. *Id.* In *Robinson*, the court determined the plaintiff's experience working in finance as relevant for determining whether the plaintiff's failure to properly assess his property value was just an error. 849 F.3d at 586. Plaintiff past work experiences should have put him on notice on how to assess his property. His continued reliance on legal advice amounts to a reckless disregard for the truth.

Furthermore, Plaintiff received warnings on his bankruptcy petition warning against "penalty of perjury" and he signed that he understood that "making a false statement, [or] concealing property . . . in connection with a bankruptcy case," could result in fines and/or jail time. ECF No. 28, attach. 1 at 6. This shows again that Plaintiff had some notice that he should not be omitting his personal property. According to Plaintiff, he did not act improperly because he followed the advice of his attorney. The attorney apparently said "anything used by [his] daughters, or could be considered for [his] daughters, is not to be disclosed in [his] bankruptcy because it is not eligible to be used for consideration for repayment." ECF No. 28, attach. 6 at 4. That explanation does not hold much weight because under Virginia code, there are some items that are exempt from being reclaimed during bankruptcy. ECF No. 28, attach. 1 at 16-18. Plaintiff knew this because he claimed exemptions on his petition. *See id.* It "should have been obvious to [Plaintiff] that his attorney was mistaken" because if items meant for his daughter were not eligible then he should have able to list the items as exempt like he did with the others. *See id.*; *Robinson*, 849 F.3d at 586. Because of the aforementioned reasons, Plaintiff's claims of complete reliance on his attorney's advice in filing his bankruptcy petition are likely insufficient justifications for the omissions in his filing.

Additionally, this court is skeptical that Plaintiff did rely so completely on his attorney's advice. The singular largest omission by Plaintiff was the $100,000 worth of Jordan sneakers. ECF No. 28, attach. 6 at 5. He claimed they were a financial asset he meant to leave to his daughters. *Id.* The bankruptcy petition asks plainly if the party has any assets that have not been already disclosed. ECF No. 28, attach. 1 at 15. Plaintiff said he had none. *Id.*

However, during his deposition he said "I didn't want to disclose [the sneakers.]" ECF No. 28, attach. 6 at 5. He said he realized that he couldn't "say I have $100,000 worth of sneakers on a bankruptcy petition." *Id.* That indicates Plaintiff knew that the value of the sneakers would likely impact his bankruptcy claim. If he believed his lawyer, that it was fine not to include financial assets he meant to leave for his daughters, he would not have been concerned about the sneakers.

Furthermore, there were many items that Plaintiff failed to disclose that were not items used by or for his daughters. He also did not include the exercise equipment, or the firearms and ammunition mentioned previously as assets meant for hid kids. The failure to disclose these items show that Plaintiff omitted items himself without the advice of counsel.

There is strong evidence Plaintiff attempted to gain an unfair advantage by misleading the court by failing to disclose assets. First, he meant to shield financial assets in order for his daughters to have in the future. ECF No. 28, attach. 6 at 5. Second, he meant to keep personal goods for himself like the exercise equipment and the firearms. Therefore, this is unlike *Calafiore* where the court did not find the party had a motive to conceal assets in his bankruptcy claim. *See* 418 F. Supp. 2d at 799.

Conclusion

Summary judgment should be granted to Defendant. Plaintiff should be judicially estopped from pursuing the current complaint against Defendant 1 because it is likely he acted intentionally to mislead the court for his own gain when he submitted two inconsistent personal property values. The allegation of mistaken legal advice is probably not a sufficient justification for the discrepancies between the bankruptcy petition and the homeowner's insurance claim because at times Plaintiff seems to have omitted property without the advice of counsel and also he should have been aware the advice he was receiving as incorrect. For these reasons, Plaintiff has failed to show there are any genuine issues of material fact; therefore, Defendant is entitled to summary judgment.

Applicant Details

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Applicant Education

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Date of BA/BS	**June 2018**
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Date of JD/LLB	**June 1, 2024**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**Virginia Law Review**
Moot Court Experience	**No**

Bar Admission

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Judicial Internships/Externships	**Yes**
Post-graduate Judicial Law Clerk	**No**

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June 12, 2023

The Honorable Jamar K. Walker
U.S. District Court, E.D.Va.
600 Granby Street
Norfolk, Virginia

Dear Judge Walker:

I am a rising third-year student at the University of Virginia School of Law, and I am writing to apply for a clerkship in your chambers following my graduation in May 2024. I would be interested in clerking for the 2024 or 2025 terms.

I am enclosing my resume, my law school and undergraduate transcripts, and a writing sample. You will also be receiving letters of recommendation from Professors Mitu Gulati, Caleb Nelson, and Cynthia Nicoletti. If you would like to reach them, Professor Gulati's telephone number is (919) 360-3735, Professor Nicoletti's telephone number is (434) 243-8540, and Professor Nelson's telephone number is (434) 924-7372.

Please reach out to me at the phone number or email above if I can offer further information. I appreciate your consideration.

Sincerely,

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EDUCATION

University of Virginia School of Law, Charlottesville, VA
J.D., Expected May 2024

- GPA: 3.84
- *Virginia Law Review*, Notes Editor
- UVA Law Softball Invitational, Co-Rec Blue
- Research Assistant to Professor Mitu Gulati and Professor Rich Schragger

Dartmouth College, Hanover, NH
B.A., English (Minor: Italian), June 2018

- Emily Dickinson International Society Undergraduate Essay Prize
- First-Year Orientation Leader
- Honors thesis: *"A dizzy music": Temporal Loops in Emily Dickinson's Fascicle 18*

EXPERIENCE

The Honorable A. Marvin Quattlebaum, United States Court of Appeals for the Fourth Circuit, Greenville, SC
Judicial Law Clerk, August 2026 – August 2027 (Expected)

Sullivan & Cromwell LLP, New York, NY
Summer Associate, May – July 2023

The Honorable Rachel P. Kovner, United States District Court (E.D.N.Y), Brooklyn, NY
Judicial Intern, May – July 2022

- Researched and drafted judicial opinions resolving social security appeals
- Prepared bench memoranda analyzing issues in active matters
- Edited jury instructions and oral ruling scripts for grammar and clarity

Thunderfoot, New York, NY
Senior Content Associate, July 2018 – June 2021

- Researched, wrote, and edited long-form articles and whitepapers for clients in a range of industries including financial services, healthcare, and information technology
- Drafted articles published in *AdAge*, *Forbes*, *PM360*, and *Total Retail*
- First employee at five-year-old startup to be hired directly out of college

The Dartmouth, Hanover, NH
Arts Section Editor, January 2016 – March 2018

- Managed team of more than 20 writers spanning class years and experience levels
- Planned, assigned, and edited weekly storyboard highlighting local arts events

Dartmouth French & Italian Department, Hanover, NH
Assistant Teacher, September 2016 – May 2018

- Taught Italian language practice sessions four days a week, providing student feedback
- Awarded prize for top assistant teacher in the Class of 2018

INTERESTS

Baking bread, reading contemporary fiction, playing tennis, listening to podcasts

UNIVERSITY OF VIRGINIA
SCHOOL OF LAW

Name: Madeline Killen

Date: June 07, 2023
Record ID: zuc8vt

This is a report of law and selected non-law course work (including credits earned). This is not an official transcript.

Due to the global COVID-19 pandemic, the Law faculty imposed mandatory Credit/No Credit grading for all graded classes completed after March 18 in the spring 2020 term.

		FALL 2021			
LAW	6000	Civil Procedure	4	A	Nelson,Caleb E
LAW	6002	Contracts	4	B+	Gulati,Gaurang Mitu
LAW	6003	Criminal Law	3	A	Jeffries Jr.,John C
LAW	6004	Legal Research and Writing I	1	S	Fore Jr.,Joe
LAW	6007	Torts	4	A-	Armacost,Barbara Ellen
		SPRING 2022			
LAW	6001	Constitutional Law	4	B+	Schauer,Frederick
LAW	6104	Evidence	3	A	Schauer,Frederick
LAW	7178	Feminist Jurisprudence	3	B+	Coughlin,Anne M
LAW	6005	Lgl Research & Writing II (YR)	2	S	Fore Jr.,Joe
LAW	6006	Property	4	A	Nicoletti,Cynthia Lisa
		FALL 2022			
LAW	8003	Civil Rights Litigation	3	A	Jeffries,John C
LAW	7017	Con Law II: Religious Liberty	3	A	Schwartzman,Micah Jacob
LAW	7009	Criminal Procedure Survey	4	A	Harmon,Rachel A
LAW	7140	History of American Federalism	3	A	Nicoletti,Cynthia Lisa
		SPRING 2023			
LAW	6102	Administrative Law	4	A	Bamzai,Aditya
LAW	7005	Antitrust	4	A	Fischman,Joshua
LAW	8814	Independent Research (YR)	0	YR	Nelson,Caleb E
LAW	7062	Legislation	4	A	Nelson,Caleb E

DARTMOUTH COLLEGE

DegreeWorks: Degree Audit for Killen, Madeline B

Legend

☑ Complete ≈ Complete except for classes in-progress ☐ Not Complete @ Any course number

Dartmouth College Degree Audit

Degree Audit	AB018suD as of 01/11/2018 at 03:56		
Student	Killen, Madeline B	**School**	Undergraduate
ID	F0024H2	**Degree**	Bachelor of Arts
Classification		**College**	Class of 2018
Expected Graduation Term	Spring Term 2018	**Major**	English
Overall GPA	3.52	**Modified Major**	
		Minor	Italian

☐ Degree: AB

Catalog Year: 2014-2015 Academic Year Credits Required: 35
Credits Applied: 32

Unmet conditions for this set of requirements: 3 Credits needed

☑	Prematriculation Credits and Exemptions		
☑	Specific Course Requirements		
☑	Physical Education Requirement		
☐	Distributive Requirement	Still Needed:	See **Distributive Requirement** section
☑	World Culture Requirement		
≈	Major Requirement		

☑ Prematriculation Credits and Exemptions

Catalog Year: 2014-2015 Academic Year

☑ Prematriculation Credits and Exemptions	ENVS 002	Earth as an Ecosystem	CR	0	Fall 2014
	Satisfied by	AP401 - AP - Environmental Science - College Board Adv Placement			
	HIST 000	History Unspecified	CR	0	Fall 2014
	Satisfied by	AP930 - AP - World History - College Board Adv Placement			
	HIST 000	Dup - Superseded By AP93	SU	0	Fall 2014
	Satisfied by	AP071 - AP - US History - College Board Adv Placement			
	MATH 003	Intro to Calculus	CR	0	Fall 2014
	Satisfied by	AP662 - AP - Calculus AB - College Board Adv Placement			
	MATH 008	Calc Func One/Sev Variable	PLC	0	Fall 2014
	Satisfied by	AP663 - AP Calculus AB - College Board Adv Placement			
	MATH 010	Elementary Statistics	CR	0	Fall 2014
	Satisfied by	AP901 - AP - Statistics - College Board Adv Placement			
	SPAN 001	Spanish I	PLC	0	Fall 2014
	Satisfied by	LPSP1 - Spanish Placement Test - Local Placement Test			
	WRIT 005	Expository Writing - Placed	PLC	0	Fall 2014
	Satisfied by	LPE03 - English Scores - Local Placement Test			

☑ Specific Course Requirements

Catalog Year: 2014-2015 Academic Year

☑ English/Writing Requirement					
☑ Writing 5	WRIT 005	Expository Writing	A	1	Fall 2014

DARTMOUTH COLLEGE

DegreeWorks: Degree Audit for Killen, Madeline B

☑ First-Year Seminar	BIOL 07.08	Human Health and Modernity	B+	1	Winter 2015
☑ Foreign Language Requirement					
☑ Foreign Language	ITAL 003	Introductory Italian III	A-	1	Winter 2016

☑ Physical Education Requirement Catalog Year: 2014-2015 Academic Year

☑ Physical Education Complete						

☐ Distributive Requirement Catalog Year: 2014-2015 Academic Year

☐ Distributives						
☐ Laboratory	Still Needed:	Choose a course with a Lab (SLA, TLA)				
☑ Arts (ART)	ITAL 015	Italian Cinema	A-	1	Winter 2017
☑ International or Comparative Study (INT)	ANTH 008	Rise&Fall Prehist Civzn	A	1	Summer 2016
☑ Literature (LIT)	ITAL 022	Humanism and Renaissance	A	1	Fall 2017
☐ Natural and Physical Science (SCI/SLA), 2 required	BIOL 07.08	Human Health and Modernity	B+	1	Winter 2015
	Still Needed:	Choose 1 course(s) with a SCI or SLA distributive.			
☑ Quantitative & Deductive Science (QDS)	MATH 008	Calc Func One/Sev Variable	C+	1	Fall 2014
☑ Social Analysis (SOC), 2 required	FRIT 093	Lang Teaching and Methods	A	1	Fall 2016
	PSYC 043	Emotion	B+	1	Winter 2016
☑ Technology or Applied Science (TAS/TLA)	ENGL 54.13	Digital Game Studies	A-	1	Winter 2017
☑ Traditions of Thought, Meaning & Value (TMV)	WGSS 43.03	Women and The Bible	A-	1	Fall 2016

☑ World Culture Requirement Catalog Year: 2014-2015 Academic Year

☑ World Culture						
☑ Western Cultures (W)	ITAL 012	Adv Writng&Speaking in Ital	A-	1	Spring 2016
☑ Non-Western Cultures (NW)	NAS 050	Federal Indian Law	B+	1	Spring 2015
☑ Culture and Identity (CI)	ENGL 53.20	Indian Killers Murder&Myst	A-	1	Winter 2016

≈ Major in English Catalog Year: 2014-2015 Academic Year Credits Required: 11 Credits Applied: 12

≈ Standard English Major Requirements						
☑ Distributive Requirements						
☑ Group I: Before the mid-17th century	ENGL 001	Literary History I	A-	1	Fall 2016
	ENGL 015	Shakespeare	A-	1	Fall 2017
☑ Group II: Mid-17th century to the end of the 19th century	ENGL 62.02	The New Emily Dickinson	A	1	Winter 2017
	ENGL 72.03	Bohemia: 19th Century Novel	A-	1	Fall 2017
☑ Group III: Mid-20th century to the present	ENGL 53.20	Indian Killers Murder&Myst	A-	1	Winter 2016
☑ Group IV: Criticism and Theory	ENGL 54.13	Digital Game Studies	A-	1	Winter 2017
≈ Literary History	ENGL 001	Literary History I	A-	1	Fall 2016
	ENGL 002	Literary History II	--	(1)	Winter 2018

DARTMOUTH COLLEGE

DegreeWorks: Degree Audit for Killen, Madeline B

☑	Junior Colloquium	ENGL 62.02	The New Emily Dickinson	A	1	Winter 2017
☑	Senior Seminar	ENGL 72.03	Bohemia: 19th Century Novel	A-	1	Fall 2017
☑	Culminating Experience	ENGL 72.03	Bohemia: 19th Century Novel	A-	1	Fall 2017
≈	Additional Courses	ENGL 011	Chaucer: Canterbury Tales	B+	1	Fall 2015
		ENGL 045	Intro to Literary Theory	--	(1)	Winter 2018
		ENGL 081	Writ&Read Creative Nonfict	A-	1	Summer 2016
		ENGL 098	Honors Course in English	--	(1)	Winter 2018
		WGSS 43.03	Women and The Bible	A-	1	Fall 2016

Exception By: Cart, James on 12/11/2017 Also Allow : WGSS 43.03 for additional course - Plan data

☐ **Minor in Italian** Catalog Year: 2014-2015 Academic Year

☐ Minors are not currently available in DegreeWorks Still Needed: Ignore Checkbox - Contact Department/Program to determine progress or completion.

Additional Courses

Credits Applied: 9 Classes Applied: 12

CLSP 019	Triathlon Club	P	0	Winter 2016
COSC 001	Intro Programming&Computatn	NR	1	Spring 2015
ECON 001	The Price System	B	1	Fall 2014
ECON 021	Microeconomics	C+	1	Winter 2015
ITAL 001	Introductory Italian I	A-	1	Spring 2015
ITAL 002	Introductory Italian II	A-	1	Fall 2015
ITAL 008	Exploring Ital Culture&Lang	B+	1	Spring 2016
ITAL 010	Intro to Italian Literature	A-	1	Spring 2016
PBPL 005	Intro to Public Policy	B+	1	Winter 2015
PSYC 001	Introductory Psychology	B+	1	Fall 2015
SPEC 014	DOC Trip Training	P	0	Fall 2017
SPEC 019	Independent Studies	P	0	Winter 2017
UG Physical Education	S			

Insufficient

Credits Applied: 0 Classes Applied: 1

PSYC 010	Exp Design & Methodology	W	0	Summer 2016

In-progress

Credits Applied: 3 Classes Applied: 3

ENGL 002	Literary History II	--	1	Winter 2018
ENGL 045	Intro to Literary Theory	--	1	Winter 2018
ENGL 098	Honors Course in English	--	1	Winter 2018

Exceptions

Type	Description	Date	Who	Block	Enforced
Also Allow	WGSS 43.03 for additional course - Plan data	12/11/2017	Cart, James	RA000078	Yes

Legend

☑ Complete ≈ Complete except for classes in-progress ☐ Not Complete @ Any course number

Disclaimer

This degree audit is NOT an official academic transcript. Students use this degree audit report as a guide to plan progress toward degree completion. If a world culture or distributive shows as incomplete, do not ignore this as it may impact your graduation. Students are responsible for completing all degree requirements. See http://www.dartmouth.edu/~reg/transcript/degree-audit.html for assistance in interpreting the audit. Undergraduates with specific questions contact their Dean or the Registrar's Office. Graduate students also contact their Registrar's Office.

June 12, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to recommend Madeline Killen for a clerkship. Madeline is a 2L at the University of Virginia School of Law, and I taught her twice. She was a student in my first year Property class in the spring of her 1L year and I taught her again in the fall of her 2L year in my History of American Federalism class. Madeline is one of the very best students I have ever taught. She is an excellent writer, adept at both intricate doctrinal analysis and high-level conceptual thought, an original thinker, and an all-around warm and lovely person. She has my highest recommendation and would be someone I'd hire myself if I were looking for a law clerk.

In my spring 2022 Property class, Madeline got one of the two highest grades in the class. This was a class of almost 70 students, and the exam was a difficult one. Her answer was excellent along every dimension. I require that students learn the technicalities of estates and future interests and the exam tested the Rule Against Perpetuities, and Madeline clearly mastered all the intricacies of this subject. But the exam also tested students on subtleties in the law of takings and the exercise of the police power and on landlord-tenant regulations in the age of COVID-19, and Madeline did extremely well with these types of open-ended questions too. Her exam was well-written and well-organized (something I don't ask for while students are under time pressure), creative and sharp, and attentive to detail. Madeline displayed mastery over the doctrinal complexities, but she's also fluid and supple as a legal thinker. When dealing with indeterminacies, Madeline consistently thought about the reasons behind the rule and wrestled with its extension to new and only potentially analogous situations. It was clear from Madeline's exam that she was a sophisticated and extraordinarily talented thinker.

My appreciation for Madeline's talents as a budding lawyer only deepened when she took my class on the history of American federalism last semester. Madeline also received an A in this course, which was a much smaller class with 25 students, and each student had to write three analytical papers over the course of the semester. Madeline's three papers were all uniformly excellent, and it was abundantly clear that she had spent a good deal of time in executing them. Her first paper, on which she earned an A, was on the compact theory of the Union, and I remarked that it was "provocative and imaginative." Her second, on the changes in the understanding of federalism from the end of the Civil War to the end of World War II, earned an A-, and I was impressed with Madeline's deft and subtle readings of the relevant cases.

In my Property class, Madeline was not an active participant in class discussion, but she began to volunteer and to ask questions in the History of American federalism class. She found her bearings – and her questions were always insightful and showed that she was actively thinking about the connections between different doctrinal areas of law – and about change over time.

I would be remiss if I didn't also give you a sense of Madeline as a person. Madeline and I have chatted during office hours and after class several times, and I've also been to lunch with her and one of her close friends. I would describe her as quiet on first acquaintance, but warm and funny as you get to know her. She has a keen sense of the ridiculous, I've discovered. She is a person who doesn't necessarily wear her accomplishments and her talents on her sleeve. I've also watched her interact with other students. I always require students to work together in groups a few times over the course of the semester. Madeline is unassuming, but she is also persuasive and can hold her own in a group setting. Other students respect her and listen to her when she offers her point of view.

I see Madeline as a budding superstar and an immensely talented young law student. I predict great things for her. She's the type of student that makes a career in law teaching so rewarding. I would be happy to discuss Madeline's candidacy further if that would be helpful. Please feel free to contact me at cnicoletti@law.virginia.edu or at (434) 243-8540.

Very truly yours,

Cynthia Nicoletti

Class of 1966 Research Professor of Law

June 11, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

It is with the greatest pleasure that I'm writing this letter of reference for Madeline Killen. Madeline was in my Contracts class last year (as a 1L) and has worked as a research assistant (RA) for me for over a year now. She is one of the handful of students, who because of their performance in class and as RAs, I have reached out to and urged that they apply for clerkships. Madeline is exceptional at legal research and is a delight to work with. Even more important than the quality of her research and her willingness to work hard though, is that I can trust her judgement.

I have had over a dozen top UVA students work on my projects over the past two years. Madeline is one of the only ones whose work I not only have never had to second guess, but who makes me think twice about my own conclusions. That's as high praise as I have given to any student RA in over twenty years of teaching. From my three years of clerking for multiple judges and conversations with many friends in the judiciary, I know that being able to trust the judgement of a law clerk is a crucial and rare characteristic. You will not go wrong if you hire Madeline.

Madeline stood out from the very first day of class, not only because of her smarts, but because she was always cheery and engaged. Even while she had an excellent grasp of the law, she never failed to understand where it could not fix problems that advocates wanted it to. For me, a concrete example here was in the discussions I had with her regarding the possible seizure of frozen Russian assets. One of my research specialties is international finance and the related law. My initial instincts, I confess, were to argue that the relevant US law could be read to allow not just the freeze of Russian assets (which the President did) but also confiscation of these assets. Given those instincts, perhaps biased by my shock at what Russia was perpetrating on the world, I was inclined to draft an Op Ed for the Financial Times saying just so. Madeline, based on the independent research on the same question that I had asked her to do, quietly cautioned me that I was going too far in my reading of the relevant statutes. (The other students who I had assigned the same task all agreed with me). To my surprise, since I was initially quite sure that I was right, she ended up persuading me because of the depth of her analysis. End result: I revised my Op Ed before publication. Turned out, she was correct, as subsequent commentary from legal luminaries on both sides of the political spectrum and the analysis of the top lawyers in the White House and DOJ showed me. But for Madeline, I'd have been badly embarrassed.

The Russia project is but one of many that Madeline has worked on for me. I trust her so completely that I've asked her to work on every one of the half dozen projects that I've been doing research on for close to a year now (she started work for me at the end of her 1L year). And that has included projects that were collaborations with multiple other faculty including Eric Posner of the University of Chicago, Lee Epstein of the University of Southern California and Richard Schragger of the University of Virginia. The three of them are among the toughest taskmasters in the legal academy. Madeline impressed them all, so much so that they keep asking that I give her assignments that I would prefer that they assign to their RAs since there are only so many hours I can ask for from Madeline.

As I hope you can tell from the fact that I hired Madeline as my RA and urged her to apply for clerkships to judges for whom I have the greatest of respect is an indication of my faith in how she will perform.

Please don't hesitate to reach out though if I can give you additional information.

My email is mgulati@law.virginia.edu

Regards,

Mitu Gulati

June 12, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

Madeline Killen, a rising third-year student at the University of Virginia School of Law, has asked me to write in support of her application for a clerkship. I do so with enormous enthusiasm. Madeline is exceptionally smart, and she is both an excellent lawyer and an excellent writer. Her personality is great too. In all respects, she would make a tremendous law clerk.

Madeline took Civil Procedure from me in her first semester of law school. At least in my view, that is the hardest course in our required first-year curriculum. In addition to covering the Federal Rules of Civil Procedure in considerable depth, the course examines a succession of topics that are important to lawyers but are wholly unfamiliar to most entering students—the subject-matter jurisdiction of the federal district courts, the personal jurisdiction of both state and federal courts, venue statutes and the extrastatutory doctrine of forum non conveniens, the history and modern complexities of the Erie doctrine, the concepts of claim and issue preclusion, and more. Collectively, those topics draw upon many different types of law that interact with each other in subtle and complicated ways. I make matters worse by trying to cover an enormous amount of material in a single semester; I assign a lot of reading, and the reading that I assign is often dense and technical. I want students both to master many details and to understand the broader structure into which those details fit.

Madeline thrived in the course. I teach mostly through lectures, but I periodically call on students without advance notice to answer questions about the material, and I make a notation in my class roster when a student does particularly well. Madeline was one of five students (in a class of 75) who received this mark of distinction for her cold-call. On my final exam, moreover, she earned the highest score in the entire class. I gave only three straight As in the class, and Madeline's was the highest.

I have re-read Madeline's exam in preparation for writing this letter, and it is spectacularly good. The exam consisted of five essay questions that students had three-and-a-half hours to complete. The questions spanned the course and required different styles of analysis; students had to unravel a fact pattern, explain some statements from real judicial opinions, identify rationales for a potentially counterintuitive aspect of current appellate practice, and analyze a tricky question about the preclusive effect of a federal district court's decision to dismiss a complaint for failure to state a claim. No matter the style of the question, Madeline excelled. (Not only did she get the highest overall score, but she got the highest score in the class on three of the five questions, and she was close to the highest on the other two.) Madeline did not write as many words as some of her classmates; in all, her five essays covered a little less than fourteen double-spaced pages. On each question, though, Madeline produced a crisp and beautifully written answer that provided terrific analysis. Even in her first semester of law school, she was already a skilled lawyer, and she aced the exam across the board.

In the spring of her second year, Madeline returned to my classroom for Legislation. That course is all about statutory interpretation. After an introductory unit on the interaction between a statute's text and its apparent purposes, the course covers canons of construction, debates about the use of legislative history, the various ways in which the interpretation of a statute can be affected by other sources of law (including the Constitution, other statutes, and the common law), the circumstances in which federal statutes will be held to preempt state law, debates about Chevron deference, and circumstances in which the interpretation or application of a statute might change as the statute ages. The course tries to take a systematic look at both the theory and the practice of statutory interpretation, and it rewards careful legal analysis. It also draws illustrative cases from a wide variety of areas; students have to be able to get up to speed on an environmental-law case one day, a bankruptcy case the next day, and a criminal case the day after that.

The course consistently attracts terrific students, many of whom go on to clerk. Even in this star-studded group, though, Madeline again earned a straight "A." As in Civil Procedure, she got high marks on each of the exam's five questions. (On a total of ten questions across six-and-a-half hours of exam time, I have yet to see her go down any wrong trails.) Again, both her legal analysis and her exposition were tremendously good.

In the same semester that she took Legislation, Madeline also began an independent-research project under my supervision. When I supervise students' research, I meet with them every other week to talk about what they are finding and how it might translate into a paper. Madeline's paper is not due until December 2023, so I have not yet seen a draft, but her cast of mind has impressed me. Based on our meetings, I am also very confident that she would work well with others; she is friendly, personable, and professional.

Indeed, Madeline has already demonstrated her ability to excel not only in school but also in the workplace. As a college student at Dartmouth, she had a managerial role on the student newspaper, and she was also a prize-winning student teacher in the French and Italian departments. After graduation, she spent three years working at a content-marketing firm in New York before coming to law school. As part of that job, she had a lot of contact with clients, which helped to hone what I suspect were already excellent interpersonal skills. She interacts with people very well.

Madeline's writing ability deserves special mention. In college, Madeline not only wrote regularly for the student newspaper but

Caleb Nelson - cnelson@law.virginia.edu - (434) 924-7372

also won a nationwide prize for a paper on Emily Dickinson. Later, at the firm where she worked after college, her primary job was to research, write, and edit articles and whitepapers for clients. That helps account for the professional quality of her writing; she was, in fact, a professional writer.

Some good writers have style without much substance. As her success in law school reflects, though, Madeline has both. Her legal analysis is terrific, and her writing ability helps her convey it effectively and persuasively.

Not surprisingly, then, Madeline has excelled not only in my courses, but in law school as a whole. As a second-year student, indeed, she earned a straight “A” in every course she took. Overall, her grade-point average puts her comfortably among the top twenty students in her graduating class of nearly three hundred (all of whom came to law school with distinguished academic records).

In sum, I have enormous confidence in Madeline. If you have any questions or would like any further information about her, please do not hesitate to call me at (434) 924-7372. She would be an excellent hire, and I would be very glad to sing her praises at more length.

Sincerely,

Caleb Nelson
Emerson G. Spies Distinguished Professor of Law
Edward F. Howrey Professor of Law
University of Virginia School of Law
580 Massie Rd.
Charlottesville, VA 22903
434-924-7372
434-924-7536 (fax)
cnelson@law.virginia.edu

This writing sample is a paper I wrote in Professor Cynthia Nicoletti's History of American Federalism class in Fall 2022. The assignment was to respond to the following prompt, relying only on previous class readings as sources:

> Why was the ultimate locus of sovereignty (whether in the people within the states or in the people as a whole) in the United States such an important question prior to the Civil War? Why was it an unsettled issue?

This paper has not been edited by anyone.

History of American Federalism: Paper 1

When the Founders were determining the direction of the new nation, the question of whether the locus of sovereignty lay with the states or with the people was crucial not only to defining the Union but to creating it at all. So crucial, in fact, that it went unanswered for nearly a century after the Constitution's ratification, in large part because the body tasked with giving the answer—the Supreme Court—struggled to assert its legitimacy in the new nation. This paper will first argue that the Constitution's drafters intentionally avoided settling the question of where sovereignty lay in order to secure its ratification. Then, it will contend that the issue remained disputed for decades to come partially because of the federal judiciary's inability to assert its legitimacy. Without a set theory of judicial review—or at least, of the finality of judicial review—the Court's early efforts to resolve the question were easily brushed aside.

The debates surrounding the Constitution's drafting and ratification reveal that the locus of sovereignty was top of mind for the Founders. State equality in the Senate was not only the most divisive issue of the Constitutional Convention[1] but also the most illustrative of the sovereignty question. One Founder pointed out that "[t]he controversy must be endless whilst Gentlemen differ in the grounds of their arguments; Those on the one side considering the states as districts of people composing one political society; those on the other considering them as so many political societies."[2] The former were primarily composed of Federalists; Hamilton pleaded with his opposition that "nothing could be more preposterous or absurd than to sacrifice" the rights of individuals to the power of the "artificial beings" they formed.[3] Those on the other side of the debate vocalized concerns that large states would subsume small states, resulting in a

[1] THE RECORDS OF THE FEDERAL CONVENTION OF 1787, at 444–521 (Max Farrand ed., 1911).
[2] *Id.* at 461.
[3] *Id.* at 466.

tyrannical majority rule. Gunning Bedford remarked that "the larger states will be rivals, but not against each other—they will be rivals against the *rest of the states*."[4]

Of course, this debate resulted in the bicameral legislative branch codified in Article I of the Constitution. But apart from the compromise reached in the construction of the legislative branch, the Constitution itself did little to settle the debate around the locus of sovereignty. That was likely a feature, not a flaw; the states were not willing to ratify a document that plainly stated its intentions to water down their strength, whether by weakening their citizens' voting power or by pitting them against larger and more powerful states. The intentionality of this choice is embodied in the disparity between the Federalists' public and private sentiments on state power. Kenneth Stampp writes that "Hamilton's course indicated a readiness to say almost anything that would ensure Federalist success. . . . Hamilton suppressed his true feelings and courted those who were wavering with beguiling expressions of respect for the states,"[5] and thus "the Federalists were . . . intent on giving assurances that the states would retain their sovereignty."[6] In sum, the issue of the locus of sovereignty was so crucial to the shape of the new nation that it was *too important* to decide at the outset. In ratifying the Constitution, the states were rolling the dice in the hopes that their side would eventually win out.

The decades after the ratification revealed an often gradual, though sometimes rapid, chipping away at state sovereignty that validated anti-Federalist concerns and ultimately culminated in the Civil War. Still, even as the federal government encroached on state power, the issue of the nation's locus of sovereignty remained unsettled. While a confluence of factors

[4] *Id.* at 500–01.
[5] Kenneth M. Stampp, *The Concept of a Perpetual Union*, 65 J. AM. HIST. 5, 17 (1978).
[6] *Id.* at 15.

contributed to the ongoing struggle or debate, it raged on for so many decades in large part due to doubts around the role and legitimacy of the federal judiciary.

Stampp identifies the early Supreme Court as "deliver[ing] some of the most impressive challenges to the state sovereignty school" during these decades of uncertainty.[7] He writes that "the Court under Chief Justice John Marshall . . . repeatedly emphasized the supremacy of the federal government in the exercise of its constitutional powers."[8] Stampp cites *Fletcher v. Peck*,[9] *McCulloch v. Maryland*,[10] *Gibbons v. Ogden*,[11] and *Cohens v. Virginia*[12] as pivotal decisions asserting national power over states' rights.[13] Indeed, in *McCulloch*, Marshall appears to plainly answer the question of the locus of sovereignty, writing that "[t]he government of the Union . . . is, emphatically and truly, a government of the people. In form, and in substance, it emanates from them. Its powers are granted by them, and are to be exercised directly on them, and for their benefit."[14] Given that the Supreme Court had the final authority to interpret the Constitution pursuant to the power of judicial review, there is a world in which these statements could have put the debate to rest. Of course, they did not have that effect, largely because popular questions remained about the rightfulness of that authority.

Alison LaCroix writes that the judiciary was central to "the nation's earliest debates over the scope and extent of national power."[15] Soon after the ratification, the Supremacy Clause emerged as a replacement for Madison's negative,[16] and assertions that the federal courts would

[7] *Id.* at 26.
[8] *Id.* at 26–27.
[9] 10 U.S. (6 Cranch) 87 (1810).
[10] 17 U.S. (4 Wheat.) 316 (1819).
[11] 22 U.S. (9 Wheat.) 1 (1824).
[12] 19 U.S. (6 Wheat.) 264 (1821).
[13] Stampp, *supra* note 5, at 27.
[14] 17 U.S. at 404–05.
[15] ALISON L. LACROIX, THE IDEOLOGICAL ORIGINS OF AMERICAN FEDERALISM 179 (2010).
[16] *Id.* at 181.